

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
DEPARTMENT 308 HON. CHARLES W. MC COY, JUDGE
RICHARD BOEKEN,)
)
PLAINTIFF,)
)
VS.) SUPERIOR COURT
) CASE NO. BC 226593
PHILIP MORRIS, INCORPORATED,)
A CORPORATION; INTERNATIONAL HOUSE)
OF PANCAKES, INCORPORATED, A)
CORPORATION,)
)
DEFENDANTS.)
)

REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS
FRIDAY, APRIL 6, 2001
P.M. SESSION
VOLUME 12B
PAGES 1967 THROUGH 2045, INCLUSIVE
APPEARANCES:
FOR THE PLAINTIFF: LAW OFFICES OF MICHAEL J. PIUZE
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LINDA STALEY, CSR NO. 3359, RMR, CRR
OFFICIAL REPORTER

I N D E X
FRIDAY, APRIL 6, 2001..... 2:1967:3
1:35 P.M..... 2:1967:7
WITNESS
NEAL BENOWITZ
DIRECT EXAMINATION (RESUMED) BY MR. PIUZE..... 2:1970:22
CROSS-EXAMINATION..... 2:2008:25
EXHIBITS
I.D. 330.00 - 5-1-72 MEMO..... 2:2004:1
I.D. 388.00 - 9-9-80 MEMO..... 2:2006:3
I.D. 593 - MEDICAL ARTICLE..... 2:2035:8
1967
1 CASE NUMBER: BC 226593
2 CASE NAME: BOEKEN V. PHILIP MORRIS
3 LOS ANGELES, CALIFORNIA FRIDAY, APRIL 6, 2001
4 DEPARTMENT 308 HON. CHARLES W. MC COY, JUDGE
5 APPEARANCES: (AS NOTED ON TITLE PAGE.)
6 REPORTER: LINDA STALEY, CSR NO. 3359, RMR, CRR
7 TIME: 1:35 P.M.
8
9 - - O - -
10
11 (THE FOLLOWING PROCEEDINGS WERE HELD
12 IN OPEN COURT OUT OF THE PRESENCE
13 OF THE JURY:)
14

15 NEAL BENOWITZ,
16 WITNESS, RESUMED THE STAND AND TESTIFIED FURTHER AS FOLLOWS:

17

18 THE COURT: OUR EXHIBIT.

19 MR. PIUZE: THE EXHIBIT AND SUPPORTING DOCUMENTS ARE
20 IN FRONT OF YOU, YOUR HONOR. THE EXHIBIT IS AT THE BOTTOM,
21 AND THE PART I INTEND TO READ IS THE VERY LAST PAGE, AND I'LL
22 LET MR. LEITER SAY WHAT HE HAS TO SAY.

23 MR. LEITER: THE PROBLEM, YOUR HONOR, IS A DOUBLE OR
24 TRIPLE HEARSAY PROBLEM. THIS IS A TOBACCO INSTITUTE
25 DOCUMENT, AND THE AUTHOR OF THE DOCUMENT IS APPARENTLY SAYING
26 ON THAT SECOND PAGE THAT SHOOK, HARDY, THE LAW FIRM, SAID
27 SOMETHING TO SOMEBODY ELSE, THAT SOMEBODY ELSE RELATED IT TO
28 THE AUTHOR OF THIS DOCUMENT WHO THEN WROTE THAT LAST

1968

1 SENTENCE.

2 (READING:)

3
4 "SHOOK, HARDY, THE LAW FIRM,
5 REMINDS US, I'M TOLD, THAT THE ENTIRE MATTER
6 OF ADDICTION IS THE MOST POTENT," ET CETERA,
7 ET CETERA, TO THE END OF THE DOCUMENT.

8
9 AND WE THINK THAT'S THREE LEVELS OF HEARSAY.
10 THE COURT: WHAT'S THE -- THIS IS A TOBACCO INSTITUTE
11 DOCUMENT, BUT I MEAN, WHO'S WHO HERE?
12 MR. PIUZE: THE PERSON WRITING IT IS THE EDITOR OF
13 THEIR NEWSPAPER. THE PERSON IT'S TO IS THE PRESIDENT.
14 OBVIOUSLY, PHILIP MORRIS IS ONE OF THE MEMBERS. AND THIS IS
15 NOT FOR THE TRUTH OF THE MATTER STATED, AND I'VE ALREADY TOLD
16 MR. LEITER THAT I'D BLACK OUT SHOOK, HARDY. I'D ALSO BLACK
17 OUT, "SHOOK, HARDY REMINDS US, I'M TOLD," BUT THE IDEA IS --
18 MR. LEITER: BUT THAT'S -- I'M SORRY.

19 MR. PIUZE: -- THE IDEA HERE IS THAT THEY ARE
20 DISCUSSING THEIR STRATEGY FOR DEFENDING AGAINST CLAIMS THAT
21 TOBACCO IS HURTING PEOPLE, AND THEY ARE DISCUSSING THEIR
22 STRATEGY HERE THAT THEY CANNOT HAVE FREE CHOICE IF A PERSON
23 WAS ADDICTED.

24 AND THIS IS PART OF THE THEME OF MY ENTIRE
25 CASE; THAT THEY ARE CASTING, IN EFFECT, CASTING A SMOKE
26 SCREEN OVER THE ENTIRE PUBLIC HEALTH, NOT JUST MR. BOEKEN'S,
27 BUT INCLUDING MR. BOEKEN'S, AND THAT THEY ARE PURPOSELY
28 OBFUSCATING THE ISSUES.

1969

1 THE COURT: ALL RIGHT. THERE'S SOME MORE MATERIAL IN
2 HERE. LET ME READ THIS AT A BREAK, WOULD YOU, PLEASE.

3 MR. PIUZE: YES. I WASN'T INTENDING TO USE THE OTHER
4 MATERIAL, THOUGH.

5 THE COURT: BUT IT'S IN CONTEXT. BECAUSE, APPARENTLY,
6 THIS PAGE IS JUST MORE OF THIS, RIGHT?

7 DO WE ALL AGREE ON THAT?

8 MR. PIUZE: YES.

9 MR. LEITER: IT'S A CONTINUATION OF THE SAME DOCUMENT.

10 THE COURT: GIVE ME A CHANCE TO LOOK AT THIS.

11 BUT, THIS IS THE TOBACCO INSTITUTE --

12 MR. PIUZE: OH, YES.

13 THE COURT: -- WHICH IS FUNDED BY THE DEFENDANT HERE.

14 MR. LEITER: AMONG OTHERS, YES.

15 THE COURT: AMONG OTHERS.

16 MR. PIUZE: YEAH.

17 MR. LEITER: AND OUR CONCERN IS JUST THE LAYER OF
18 REPETITION BEFORE THIS STATEMENT FINDS ITS WAY INTO THE
19 DOCUMENT.

20 MR. PIUZE: SO YOUR HONOR, TWO POINTS BEFORE WE ROLL
21 HERE. HE'S NOT OBJECTING TO THE FOUNDATION ON THIS ONE. AND
22 ALSO -- THAT'S FINE, ANY WAY THE COURT WANTS TO HANDLE IT --
23 BUT IF THE COURT ALLOWS THIS NOW, I'LL PROBABLY BE DONE --
24 NOT PROBABLY -- I AM SURE I'LL BE DONE WITH THIS WITNESS ON
25 DIRECT BEFORE THE BREAK. SO AS LONG AS I'M NOT PRECLUDED
26 FROM BRINGING IT BACK UP LATER.

27 THE COURT: WELL, I THINK WHAT WE'LL DO IS, THEN, WE
28 WOULD TAKE OUR BREAK, THEN. HOW MUCH MORE DO YOU HAVE WITH
1970

1 THE WITNESS?

2 MR. PIUZE: I'M FIGURING 20 OR 30 MINUTES.

3 THE COURT: WE'LL JUST TAKE A SHORT BREAK, GIVE ME A
4 CHANCE TO LOOK AT THE DOCUMENT.

5 MR. LEITER: THANK YOU, YOUR HONOR.

6

7 (THE FOLLOWING PROCEEDINGS WERE HELD
8 IN OPEN COURT IN THE PRESENCE
9 OF THE JURY:)

10

11 THE COURT: ALL RIGHT. OUR JURY PANEL IS WITH US;
12 COUNSEL ARE PRESENT; THE WITNESS IS ON THE WITNESS STAND.

13 SIR, YOU MAY BE SEATED.

14 THE WITNESS: THANK YOU.

15 THE COURT: YOU UNDERSTAND YOU'RE STILL UNDER OATH?

16 THE WITNESS: YES.

17 THE COURT: ALL RIGHT, SIR.

18 MR. PIUZE.

19 MR. PIUZE: THANK YOU, YOUR HONOR.

20 THE COURT: YES.

21

22 DIRECT EXAMINATION (RESUMED)

23 BY MR. PIUZE:

24 Q. I SAID TO YOU EARLIER IN THE DAY THAT I WASN'T
25 GOING TO TAKE ALL OF YOUR QUALIFICATIONS AND PUT THEM IN ONE
26 LUMP IN FRONT OF THE JURY. THIS WILL BE THE LAST TIME I'LL
27 RETURN TO THEM, AND IT WILL BE BRIEFLY.

28 BUT I'D LIKE TO DO THIS, IF YOU'D --

1971

1 A. OKAY.

2 Q. OKAY. ARE YOU AFFILIATED WITH THE UNIVERSITY
3 OF CALIFORNIA SAN FRANCISCO, COMPREHENSIVE CANCER CENTER?

4 A. YES.

5 Q. IN WHAT REGARD, PLEASE?

6 A. WE HAVE A TOBACCO CONTROL COMPONENT, AND I AM
7 THE CO-LEADER OF THAT COMPONENT OF THE CANCER CENTER.

8 Q. HAVE YOU WON NUMEROUS HONORS AND AWARDS OVER
9 THE YEARS FOR YOUR WORK HAVING TO DO WITH PUBLIC HEALTH, AND
10 SPECIFICALLY WITH TOBACCO AND NICOTINE AND ADDICTION?

11 A. YES.

12 Q. I'D LIKE TO MENTION A FEW OF THEM, AND WHEN I
13 DO, WOULD YOU PLEASE EXPLAIN TO THE JURY WHAT THESE ARE ABOUT
14 AND WHOSE NAMES ARE INVOLVED HERE.

15 THE OVE, O-V-E, FERNO AWARD FOR OUTSTANDING
16 CONTRIBUTIONS TO RESEARCH ON NICOTINE AND TOBACCO?

17 A. THIS IS AN INTERNATIONAL AWARD. OVE FERNO WAS
18 A SWEDISH PHYSIOLOGIST WHO INVENTED NICOTINE GUM; ACTUALLY,
19 USED TO HELP SWEDISH SUBMARINERS WHO COULDN'T SMOKE. THEY
20 BELIEVED IN THEIR DISCOMFORT WHEN THEY HAD TO BE ON SUBMARINE
21 RUNS.

22 THIS IS AN AWARD THAT'S AWARDED ONCE EVERY
23 THREE YEARS FOR OUTSTANDING RESEARCH RELATED TO NICOTINE,
24 TOBACCO AND HEALTH, AND I RECEIVED -- I WAS THE SECOND PERSON

25 TO RECEIVE THAT AWARD.

26 Q. THANK YOU.

27 THE ALTON OCHSNER, O-C-H-S-N-E-R, AWARD

28 RELATING TO SMOKING AND HEALTH.

1972

1 A. THAT IS A U.S. AWARD. ALTON OCHSNER WAS A
2 CHEST SURGEON WHO WAS ONE OF THE FIRST PEOPLE TO INVESTIGATE
3 LUNG CANCER AND ITS RELATIONSHIP TO SMOKING. HE FOUNDED THE
4 OCHSNER CLINIC IN NEW ORLEANS, AND THERE IS AN ANNUAL AWARD
5 RECOGNIZING PEOPLE WHO HAVE MADE OUTSTANDING CONTRIBUTIONS IN
6 SMOKING AND HEALTH RESEARCH, AND I WON THAT FOR THE WORK ON
7 NICOTINE ADDICTION THAT I'VE DONE.

8 Q. AND HOW ABOUT MASTER LECTURER, SOCIETY FOR
9 RESEARCH ON NICOTINE AND TOBACCO. WOULD YOU TELL US A LITTLE
10 BIT ABOUT THAT?

11 A. THE SOCIETY ON NICOTINE -- THE SOCIETY OF
12 RESEARCH ON NICOTINE AND TOBACCO IS AN INTERNATIONAL GROUP OF
13 SCIENTISTS WHOSE WORK ARE RELATED TO THAT TOPIC. AND EACH
14 YEAR, THERE'S A MASTER LECTURER WHO HAS DONE OUTSTANDING WORK
15 WHO'S ASKED TO SORT OF SUMMARIZE THEIR RESEARCH OVER THEIR
16 CAREER FOR THE ORGANIZATION.

17 Q. HAVE YOU BEEN INVOLVED WITH INTERNATIONAL
18 ORGANIZATIONS HAVING TO DO WITH THESE TOPICS THAT WE'RE
19 DISCUSSING HERE?

20 A. YES.

21 Q. TOUCH ON A FEW FOR US, PLEASE, WOULD YOU?

22 A. WELL, I HAVE WORKED WITH THE WORLD HEALTH
23 ORGANIZATION, WHICH HAS AN INTERNATIONAL PROGRAM TO TRY TO
24 DEAL WITH SMOKING.

25 I'VE WORKED IN THE U.K. THERE IS A COMMITTEE
26 THAT WILL ADDRESS THE ISSUE OF WHAT -- HOW TOBACCO PRODUCTS
27 SHOULD BE DEVELOPED IN THE FUTURE WITH RESPECT TO YIELDS AND
28 THINGS LIKE THAT. SO I WORK WITH THAT COMMITTEE.

1973

1 AND I'VE ALSO WORKED WITH THE EUROPEAN GROUP
2 THAT'S DEALING WITH TOBACCO REGULATIONS THROUGHOUT EUROPE.

3 Q. THANKS. WHAT -- AND THIS WILL BE THE LAST.

4 YOUR CV. YOUR RESUME IS THIS WHOLE ENTIRE
5 SHEAF OF PAPER WITH ALL YOUR PUBLICATIONS AND EVERYTHING
6 YOU'VE DONE, RIGHT?

7 A. THAT'S CORRECT.

8 Q. I'VE LEFT MOST OF IT OUT.

9 A. YES.

10 Q. WHAT HAVE YOU DONE WITH THE WORLD HEALTH
11 ORGANIZATION, PLEASE, AS FAR AS TOBACCO AND NICOTINE AND
12 ADDICTION?

13 A. WELL, THE WORLD HEALTH ORGANIZATION IS TRYING
14 TO DEVELOP SOME INTERNATIONAL GUIDELINES FOR HOW TO HANDLE
15 TOBACCO FOR THINGS LIKE WHAT TO DO ABOUT ADVERTISING, WHAT TO
16 DO ABOUT REGULATION, WHAT TO DO ABOUT HIGH- AND LOW-YIELD
17 ISSUES AND THEIR TESTING.

18 THEY'VE HAD SEVERAL MEETINGS OVER THE PAST FEW
19 YEARS BRINGING SCIENTISTS AND ADVOCATES TOGETHER TALKING
20 ABOUT WHAT THE FRAMEWORK SHOULD BE FOR AN INTERNATIONAL
21 AGREEMENT. AND SO I'VE CONSULTED WITH THEM ON THAT ISSUE.

22 Q. OKAY. THANK YOU.

23 NOW, I'M DONE WITH THAT. APPRECIATE IT. I'M
24 GOING TO RICHARD BOEKEN SHORTLY, BUT I THINK I'VE GOT A
25 COUPLE OF SMALL STEPS BEFORE I GET THERE.
26 WHEN YOU WERE TALKING EARLIER ABOUT
27 COMPENSATING, MEANING A PERSON USING A CIGARETTE -- IF THE
28 PERSON HAS 5 INSTEAD OF 30 OR 15 INSTEAD OF 30 -- THE PERSON

1974

1 SOMEHOW USING THE CIGARETTE DIFFERENTLY IN ORDER TO WIND UP
2 GETTING AS CLOSE AS POSSIBLE TO THE SAME HIT OF NICOTINE, IS
3 THAT SOMETHING THE PERSON IS AWARE OF, IN YOUR VIEW?
4 A. NO. WELL, ONE ASPECT, THEY COULD BE. SOME
5 PEOPLE COMPENSATE BY SMOKING MORE CIGARETTES. NOT FOR THE
6 REDUCED CIGARETTE NUMBER, BUT SAY IF THEY SWITCH TO A
7 LOW-YIELD CIGARETTE.
8 BUT THE BIGGEST ASPECT OF COMPENSATION IS
9 REALLY SOMETHING SMOKERS ARE NOT AWARE OF, WHICH IS THAT THEY
10 TAKE BIGGER PUFFS, AND THEY TAKE MORE FREQUENT PUFFS ON A
11 CIGARETTE.
12 WHEN YOU TRY TO ASK PEOPLE TO ESTIMATE THE SIZE
13 OF THEIR PUFFS, PEOPLE ARE NOT VERY AWARE OF WHETHER -- OF
14 THE SIZE. SOME PEOPLE ARE. SOME PEOPLE SAY WHEN THEY SWITCH
15 TO LOW-YIELD CIGARETTES, THE SMOKE IS VERY MILD. SOME PEOPLE
16 SAY IT'S LIKE SMOKING AIR, AND THEY KNOW THEY TAKE BIGGER
17 PUFFS, BUT MANY DON'T.
18 Q. THANKS.
19 WE'VE HEARD TESTIMONY HERE, A WHOLE DAY'S,
20 ACTUALLY, WHERE THERE WASN'T A WITNESS UP HERE, BUT TESTIMONY
21 WAS BEING READ FROM SOME EX-PHILIP MORRIS SCIENTIST, AND THEY
22 WERE TALKING ABOUT RAT STUDIES QUITE A BIT.
23 ARE YOU FAMILIAR WITH RAT STUDIES AS IT RELATES
24 TO NICOTINE ADDICTION?
25 A. YES.
26 Q. IS THERE SOMETHING YOU CAN POINT TO IN RAT
27 STUDIES WHICH YOU ARE FAMILIAR THAT WOULD SHED SOME LIGHT ON
28 WHETHER PEOPLE MAY OR MAY NOT KNOW THEY'RE COMPENSATING WHEN
1975
1 THEY HAVE FEWER CIGARETTES AND SUCK HARDER TO GET MORE
2 NICOTINE, OR WHEN THEY HAVE A LOWER-YIELD CIGARETTE AND SUCK
3 HARDER TO GET MORE NICOTINE?
4 A. YES. ONE OF THE MAIN WAYS OF STUDYING DRUG
5 ADDICTION OR DRUG DEPENDENCE IN ANIMALS IS TO DEVELOP WHAT'S
6 CALLED SELF-ADMINISTRATION MODELS. THEY'RE SUPPOSED TO BE
7 MODELS OF HUMAN BEHAVIOR, BUT WHAT, BASICALLY, THEY ARE IS TO
8 TRAIN ANIMALS TO DOSE THEMSELVES WITH DRUGS.
9 SO THE ANIMAL CAN PUSH A LEVER OR A BUTTON AND
10 GET A CERTAIN AMOUNT OF DRUG. AND THEY CAN DO A CERTAIN
11 AMOUNT OF -- THEY CAN DO DIFFERENT AMOUNTS OF WORK TO GET
12 DIFFERENT AMOUNTS OF DRUG. AND WHAT'S FOUND IS THAT THE
13 ANIMALS, LIKE PEOPLE, TEND TO TAKE IN ABOUT THE SAME AMOUNT
14 OF NICOTINE EACH DAY. SO THEY CAN SELF-ADMINISTER AND ADJUST
15 THE AMOUNT THAT THEY TAKE IN. AND THAT'S, I THINK, AN ANIMAL
16 EQUIVALENT OF THE COMPENSATION BEHAVIOR OF HUMANS.
17 Q. HAVE THERE BEEN STUDIES DONE WHERE RATS WHO ARE
18 USED TO HAVING -- I'M GOING TO MAKE THESE NUMBERS UP NOW,
19 JUST MEANT TO BE AN EXAMPLE, AND IF THEY'RE REAL NUMBERS, YOU
20 CAN FILL IT IN -- BUT RATS THAT ARE MEANT TO HAVE A CERTAIN
21 AMOUNT OF -- ARE USED TO HAVING A CERTAIN AMOUNT OF
22 NICOTINE -- I'M JUST GOING TO USE THE NO. 10 BECAUSE IT'S A
23 ROUND NUMBER -- HAVE BEEN WEANED OR SOMEHOW CUT DOWN SO THAT
24 INSTEAD OF GETTING 10, NOW, THEY'RE ONLY GETTING A 5 OR A 6
25 OR SOMETHING LIKE THAT, AND THEN SCIENTISTS WATCH THEM TO SEE
26 WHAT THEY'LL DO?
27 A. THE WAY IT'S DONE IS, SAY, YOU CUT THE AMOUNT
28 OF NICOTINE PER INJECTION DOWN SO THAT THEY CAN'T GET AS
1976
1 MUCH, AND THEN THEY SEE HOW MANY INJECTIONS THEY WORK FOR.
2 SO THEY WORK FOR MORE INJECTIONS, IF THERE'S LESS PER
3 INJECTION, SO THE TOTAL AMOUNT THEY MIGHT TAKE IN MAY BE THE
4 SAME.
5 Q. SO THEY'RE STRIVING TO MAINTAIN A PREDETERMINED

6 LEVEL?

7 A. YES.

8 Q. AND IS THAT WHAT YOU'VE BEEN TELLING US HAPPENS
9 IN PEOPLE?

10 A. YES.

11 Q. OKAY. THANK YOU.

12 I THINK THIS IS MY LAST STOP BEFORE WE TALK
13 ABOUT RICHARD BOEKEN.

14 MR. GOLDSTEIN, YOU WANT TO PLAY THIS FOR ME?

15 I'D LIKE YOU TO JUST TAKE A LOOK AT THIS ONE
16 EARLY COMMERCIAL, WHICH WE'VE SHOWN HERE, AND I'M GOING TO
17 ASK YOU A COUPLE OF QUESTIONS.

18

19 (VIDEO BEING PLAYED, NOT REPORTED.)

20

21 Q. BY MR. PIUZE: SO HERE'S WHAT I WAS INTERESTED
22 IN.

23 SOMETIMES, I FORGET TO EAT, BUT I DON'T FORGET
24 TO SMOKE.

25 NOW, DOES THAT HAVE ANY SIGNIFICANCE TO YOU?

26 WE'RE TALKING HERE ABOUT TOBACCO AND NICOTINE
27 ADDICTION.

28 IS THAT A SIGNIFICANT COMMENT TO YOU?

1977

1 A. YES.

2 Q. WHY?

3 A. WELL, REGULAR SMOKERS DO EXACTLY THAT. THEY
4 NEVER FORGET TO SMOKE. IT IS A VERY HIGH PRIORITY. IF A
5 SMOKER RUNS OUT OF CIGARETTES, THEY'LL GO OUT AT NIGHT TO
6 MAKE SURE THEY HAVE CIGARETTES FOR THE FIRST THING IN THE
7 MORNING. SMOKERS ARE VERY AWARE OF HOW MANY CIGARETTES THEY
8 HAVE AND THAT THEY HAVE AN ADEQUATE SUPPLY.

9 IT ALSO TALKS ABOUT THE ISSUE OF SMOKING WHEN
10 WORKING, WHICH MANY PEOPLE DO. AND ALSO, SMOKING INSTEAD OF
11 EATING, WHICH MANY PEOPLE DO. BUT ONCE YOU ARE AN ADDICTED
12 SMOKER, SMOKING IS A VERY HIGH PRIORITY.

13 Q. OKAY. THANK YOU.

14 NOW, I'VE PROVIDED YOU WITH SOME MATERIALS
15 REGARDING RICHARD BOEKEN; IS THAT CORRECT?

16 A. YES.

17 Q. DO YOU WANT TO TELL THE JURY WHAT THAT IS,
18 PLEASE?

19 A. THERE WERE TWO THINGS. ONE WAS A TOBACCO
20 ADDICTION QUESTIONNAIRE, WHICH WAS A NUMBER OF QUESTIONS
21 RELATING TO HIS SMOKING HISTORY. AND THE SECOND WAS VOLUMES
22 OF HIS DEPOSITION WHERE HE TALKED AT VARIOUS PLACES ABOUT
23 SMOKING.

24 MR. PIUZE: CAN SOMEONE MAKE THIS THING GO OFF?

25 IS THAT POSSIBLE?

26 THANK YOU.

27 Q. WHOSE QUESTIONNAIRE WAS IT?

28 A. IT'S A QUESTIONNAIRE THAT I HAVE DEVELOPED TO

1978

1 GET INFORMATION ON ADDICTION, AND I SENT A COPY TO YOUR
2 OFFICE, AND YOUR OFFICE ADMINISTERED IT TO MR. BOEKEN,
3 I ASSUME.

4 Q. HOW DID YOU COME TO DEVELOP THIS QUESTIONNAIRE,
5 PLEASE.

6 A. THESE WERE THE QUESTIONS THAT I THOUGHT WERE
7 MOST RELEVANT FROM MY RESEARCH AND EXPERIENCE TO ASSESSING
8 ADDICTION.

9 Q. UNDER WHAT CIRCUMSTANCES DO YOU HAVE PEOPLE
10 ANSWER THESE QUESTIONS, TYPICALLY?

11 A. IF I'M INTERESTED IN ASSESSING SOMEONE FOR
12 ADDICTION. MY RESEARCH MIGHT BE USED, CERTAINLY, IN
13 MEDICAL/LEGAL CASES. IF THE QUESTION OF ADDICTION COMES UP,
14 THIS IS THE INFORMATION THAT I THINK IS HELPFUL.

15 Q. TELL THE JURY WHAT THE QUESTIONS WERE, COULD
16 YOU, PLEASE?

17 A. YES. THE QUESTIONS INCLUDE:

18 AT WHAT AGE DID YOU START SMOKING?

19 WHAT WERE THE CIRCUMSTANCES OF STARTING

20 SMOKING?

21 DID YOUR PARENTS SMOKE; BROTHERS OR SISTERS

22 SMOKE; SPOUSE SMOKE?

23 HOW OLD WERE YOU WHEN YOU STARTED SMOKING

24 CIGARETTES EVERY DAY?

25 APPROXIMATELY HOW MANY CIGARETTES DID YOU SMOKE

26 AT DIFFERENT AGES SINCE YOU STARTED SMOKING?

27 THE BRANDS YOU SMOKED AT DIFFERENT AGES SINCE

28 YOU STARTED?

1979

1 DID YOU EVER SWITCH TO A LOW-TAR CIGARETTE, AND

2 WHAT HAPPENED WHEN YOU TRIED TO SWITCH?

3 WHEN DID YOU QUIT SMOKING, IF APPLICABLE?

4 DID YOU TRY TO QUIT BEFORE?

5 IF SO, HOW LONG WERE YOU ABLE TO QUIT?

6 WHAT DID YOU EXPERIENCE WHEN YOU TRIED TO QUIT?

7 WHAT MADE YOU START SMOKING AGAIN?

8 WHAT'S YOUR PATTERN OF SMOKING THROUGHOUT THE

9 DAY?

10 HOW SOON AFTER YOU AWAKEN IN THE MORNING DO YOU

11 HAVE YOUR FIRST CIGARETTE?

12 DID YOU EVER EXPERIENCE ANY HEALTH PROBLEMS

13 RELATED TO YOUR SMOKING, AND IF SO, WHAT?

14 HAS A PHYSICIAN EVER ADVISED TO YOU QUIT; AND

15 WHEN AND WHY AND WHAT DID YOU DO?

16 DO YOU FIND IT HARD TO REFRAIN FROM SMOKING IN

17 PLACES WHERE IT'S FORBIDDEN, LIKE A CHURCH OR CINEMA?

18 WHICH CIGARETTE OF THE DAY WOULD YOU HATE TO

19 GIVE UP THE MOST?

20 DO YOU SMOKE MORE FREQUENTLY DURING THE FIRST

21 HOURS OF THE DAY THAN LATER ON IN THE DAY?

22 DO YOU INHALE?

23 HAVE YOU EVER HAD SPECIFIC TREATMENT TO HELP

24 STOP SMOKING?

25 HAVE YOU HAD COUNSELING?

26 HAVE YOU TRIED MEDICATIONS?

27 I ASKED HIM TO DESCRIBE THAT.

28 DO YOU SMOKE WHEN YOU'RE SICK, SUCH AS HAVING A

1980

1 COLD OR THE FLU?

2 DO YOU DRINK ALCOHOL?

3 HAVE YOU HAD AN ALCOHOL ABUSE PROBLEM?

4 HAVE YOU ABUSED OTHER DRUGS? AND PLEASE

5 DESCRIBE.

6 AND HAVE YOU BEEN DIAGNOSED AS HAVING ANY

7 PSYCHIATRIC PROBLEMS, SUCH AS ANXIETY, DEPRESSION

8 SCHIZOPHRENIA?

9 Q. DID YOU GET ANSWERS TO THOSE QUESTIONS?

10 A. YES.

11 Q. NOW, I'M GOING TO LEAVE THIS UP TO YOU, AT

12 LEAST INITIALLY. DO YOU WANT TO DISCUSS THOSE QUESTIONS

13 INDIVIDUALLY?

14 DO YOU WANT TO DISCUSS -- EXCUSE ME -- DO YOU

15 WANT TO DISCUSS THOSE ANSWERS INDIVIDUALLY?

16 DO YOU WANT TO DISCUSS THE ANSWERS AS A BLOCK?
17 HOW WOULD YOU LIKE ME TO APPROACH THIS?
18 A. WELL, I THINK WE CAN TALK ABOUT IT IN GENERAL
19 AREAS.
20 Q. PLEASE DO SO.
21 A. WELL, IN TERMS OF ASSESSING IF SOMEONE'S
22 ADDICTED, THE THINGS THAT ARE RELEVANT ARE WHEN DOES A PERSON
23 START SMOKING.
24 IT'S KNOWN THAT THE EARLIER YOU START, THE MORE
25 LIKELY YOU ARE TO BECOME ADDICTED AND THE HARDER IT IS TO
26 QUIT SMOKING.
27 AND IN MR. BOEKEN'S CASE, HE STARTED HERE, IT
28 SAYS, 13. HIS DEPOSITION ACTUALLY SAID HE EXPERIMENTED AT
1981
1 AGE 11.
2 I LIKE TO KNOW THE CIRCUMSTANCES IN WHICH
3 SOMEONE STARTED SMOKING.
4 AND HE SAID THAT HIS FRIENDS WERE SMOKING, AND
5 HE WANTED TO BE COOL AND WANTED TO SEEM GROWN-UP AND
6 SOPHISTICATED, WHICH IS A VERY COMMON REASON WHY MANY PEOPLE
7 START SMOKING.
8 THERE WERE ALSO FAMILY FACTORS. HIS PARENTS
9 SMOKED, HUSBAND, SISTER SMOKED. LATER ON, HIS WIFE SMOKED.
10 AND MANY OF HIS FRIENDS SMOKED. SO HE WAS IN AN ENVIRONMENT
11 WHERE MANY PEOPLE DID SMOKE.
12 I WAS INTERESTED IN HOW MUCH PEOPLE SMOKE AND
13 WHEN THEY STARTED TO SMOKE ON A REGULAR BASIS.
14 HE SAID THAT BY AGE 13, OR ELSEWHERE, BY AGE
15 14, THAT HE WAS SMOKING EVERY DAY AND SMOKING TWO PACKS A
16 DAY, AND HE CONTINUED TO SMOKE TWO PACKS A DAY FOR 40 YEARS
17 WITH A FEW BRIEF TIMES WHEN HE TRIED TO QUIT.
18 THE BRANDS HE SMOKED WERE A NUMBER OF MARLBORO
19 BRANDS: REDS, GOLDS, LIGHTS, ULTRALIGHTS. AND HE
20 OCCASIONALLY TRIED TO SMOKE OTHER BRANDS, BUT THE MAIN
21 CIGARETTE BRANDS HE SMOKED WERE MARLBOROS. HE DID SWITCH TO
22 THE LIGHTS AND ULTRALIGHTS SAYING HE SMOKED THE SAME AMOUNT.
23 AT THE TIME THAT THIS WAS FILLED OUT, DID HE
24 QUIT FOR GOOD, AND HE SAID HE QUIT FOR GOOD AFTER HIS
25 DIAGNOSIS OF LUNG CANCER. WELL, UNFORTUNATELY, HE STARTED
26 SMOKING AGAIN AFTER THAT QUIT ATTEMPT, SO I DON'T THINK HE
27 EVER QUIT FOR GOOD. SO AS FAR AS I KNOW, HE'S STILL SMOKING,
28 EVEN THOUGH HE HAS LUNG CANCER.
1982
1 IN HIS ATTEMPTS TO QUIT, THERE WAS AN
2 ATTACHMENT THAT HE GAVE WHERE HE LISTS ABOUT EIGHT OR NINE
3 DIFFERENT QUIT ATTEMPTS. SOME OF THEM HE TRIED TO QUIT ON
4 HIS OWN. SOME OF THEM, HE HAD HYPNOSIS.
5 ONE TIME, HE WENT TO SMOKENDERS. ONE TIME --
6 TWICE, HE WENT TO SMOKERS ANONYMOUS, WHICH IS ANOTHER
7 BEHAVIORAL THERAPY. HE TRIED NICOTINE GUM.
8 HE HAD A NUMBER OF ATTEMPTS, AND IN SEVERAL
9 OCCASIONS, HE WAS ABLE TO QUIT SMOKING FOR A FEW WEEKS, BUT
10 EVEN THOUGH HE WENT TO PROGRAMS LIKE SMOKERS ANONYMOUS ON A
11 REGULAR BASIS -- HERE, HE SAID HE WENT THREE TIMES A WEEK FOR
12 FOUR YEARS -- HE WAS STILL NOT ABLE TO QUIT FOR MORE THAN A
13 FEW WEEKS.
14 SO HE DID HAVE QUIT ATTEMPTS, AND IT LOOKED
15 LIKE HE TRIED A LOT OF DIFFERENT THINGS. HE, OBVIOUSLY, PUT
16 EFFORT INTO IT. HE SOUGHT HELP, AND HE FAILED, WHICH IS VERY
17 STRONG EVIDENCE FOR A HIGH LEVEL OF ADDICTION.
18 WHEN HE TRIED TO QUIT, HE EXPERIENCED
19 IRRITABILITY, YEARNING FOR CIGARETTES, ANXIETY, OVEREATING.
20 HE SAID HE WAS NOT NICE TO BE AROUND. AND HE SAID IT WAS

21 HARD TO FUNCTION AT WORK.
22 SO THOSE ARE ALL SOME OF THE CLASSIC WITHDRAWAL
23 SYMPTOMS OF PEOPLE WHO HAVE BEEN USED TO HAVING NICOTINE IN
24 THEIR DAILY LIVES AND DON'T HAVE IT AND HAVE TROUBLE
25 FUNCTIONING WITHOUT IT.
26 IN TERMS OF WHAT MADE HIM START SMOKING AGAIN,
27 HE LISTS ALL OF THESE THINGS AS REASONS WHY HE WANTED TO --
28 WHY HE NEEDED TO START SMOKING AGAIN.

1983

1 ONE OF THE IMPORTANT QUESTIONS IN LOOKING AT
2 THE AMOUNT OF DEPENDENCE WOULD BE HOW SOON IS IT AFTER YOU
3 WAKE UP DO YOU HAVE YOUR FIRST CIGARETTE, AND THE MOST
4 DEPENDENT SMOKERS HAVE ONE IMMEDIATELY WHEN THEY WAKE UP.
5 THEIR CIGARETTES ARE BY THEIR BEDSIDES.
6 AND HE SAID THE FIRST THING THAT HE DID AFTER
7 OPENING HIS EYES WAS TO SMOKE. AND ALSO SAID -- AND THIS IS
8 ALSO ANOTHER SIGN OF HIGH DEPENDENCE -- IF HE EVER WOKE UP AT
9 NIGHT, HE'D HAVE A CIGARETTE.
10 HE WAS ASKED IF HE EVER HAD HEALTH PROBLEMS DUE
11 TO SMOKING. HE HAD BRONCHITIS IN HIS 30'S.
12 HE SAID HE DIDN'T -- HE WAS NOT ASKED BY -- HE
13 WAS NOT ASKED BY A DOCTOR TO QUIT SMOKING IN THIS STATEMENT.
14 IN HIS DEPOSITION, HE SUGGESTS THAT ONE PHYSICIAN DID TELL
15 HIM TO QUIT SMOKING. SO I'M NOT -- THOSE ARE NOT ENTIRELY
16 CONSISTENT.
17 HE WAS ASKED, DID HE HAVE TROUBLE NOT SMOKING
18 IN PLACES WHERE SMOKING WAS FORBIDDEN?
19 AND HE SAID, YES, HE DID.
20 WHICH CIGARETTE WOULD YOU HATE TO GIVE UP IN
21 THE MORNING?
22 WELL, AGAIN, PEOPLE WHO ARE MORE ADDICTED NEED
23 THAT FIRST MORNING CIGARETTE, AND THAT WAS THE ONE HE HAD THE
24 MOST TROUBLE WITH IF HE HAD TO GIVE UP.
25 Q. LET ME STOP YOU. I THINK YOU MIGHT HAVE
26 MISSTATED THE QUESTION.
27 WHICH CIGARETTE WOULD WHAT?
28 A. WOULD YOU MOST HATE TO GIVE UP.

1984

1 Q. OKAY.
2 A. AND NOT HAVE.
3 Q. ALL RIGHT. AND WHAT WAS HIS ANSWER?
4 A. THE FIRST CIGARETTE IN THE MORNING.
5 Q. OKAY.
6 A. THAT'S DIFFERENT FROM, SAY, SOMEONE WHO IS AN
7 OCCASIONAL SMOKER FOR PLEASURE LIKES TO HAVE A CIGARETTE
8 AFTER DINNER, FOR EXAMPLE. IF YOU NEED YOUR FIRST CIGARETTE
9 IN THE MORNING, THAT'S CONSISTENT WITH HARD-CORE DRUG
10 DEPENDENCY. YOU'RE WAKING UP AND YOUR BODY HAS A
11 PHYSIOLOGICAL NEED FOR NICOTINE.
12 AGAIN, THE SAME LINE. ASKED IF THEY SMOKE MORE
13 IN THE MORNING THAN LATER IN THE DAY. AND AGAIN, PEOPLE WHO
14 ARE HIGHLY ADDICTED DO THAT TRYING TO SORT OF LOAD UP WITH
15 NICOTINE AFTER NOT SMOKING ALL NIGHT. THAT WAS TRUE FOR HIM.
16 HE ALWAYS INHALED.
17 HE HAD TAKEN TREATMENTS TO STOP SMOKING, AS I
18 TALKED ABOUT BEFORE.
19 HE TRIED MEDICATIONS, AS I TALKED ABOUT BEFORE.
20 HE SAYS THAT HE ALWAYS SMOKED WHEN HE WAS SICK,
21 SO WITH COLDS OR FLU.
22 HE DID DRINK ALCOHOL AT ONE TIME, BUT HE HAD
23 NOT DRUNK ALCOHOL SINCE 1974.
24 HE HAD SOME DRUG ABUSE IN THE '70'S -- IN THE
25 '60'S, BUT NOT SINCE THEN.

26 AND HE HAD NO PSYCHIATRIC PROBLEMS OTHER THAN
27 HE SAW A THERAPIST AFTER HIS CANCER DIAGNOSIS.
28 SO MY BOTTOM LINE READING THIS, BOTH FROM THE
1985
1 CONSUMPTION HISTORY, FROM THE SMOKING PATTERN, FROM WHEN HE
2 STARTED SMOKING, FROM HIS QUIT ATTEMPTS AND WHAT HAPPENED, IS
3 THAT HE IS VERY HIGHLY ADDICTED.
4 Q. ARE THERE OFFICIAL DEFINITIONS OUT THERE ABOUT
5 WHAT IS ADDICTED?
6 A. WELL, THERE ARE TWO RATING SYSTEMS THAT ARE
7 USED. ONE IS WHAT'S CALLED A FAGERSTROM SCALE FOR
8 DEPENDENTS, AND THE SECOND IS THE DSM-IV CRITERIA FOR
9 ADDICTION.
10 THESE ARE CRITERIA DEVELOPED BY THE AMERICAN
11 PSYCHIATRIC ASSOCIATION FOR DIAGNOSIS OF A VARIETY OF MENTAL
12 DISORDERS. ONE OF THEM IS DRUG DEPENDENCE. AND YOU CAN RATE
13 NICOTINE AS A DRUG DEPENDENCE. IT'S NOT DESIGNED FOR
14 NICOTINE, BUT IT'S APPLIED FOR SOME PEOPLE FOR NICOTINE.
15 Q. YOU CAN JUST TALK BRIEFLY ABOUT THE TWO.
16 FAGERSTROM, WAS THAT SPECIFICALLY DEFINED FOR
17 SMOKING?
18 A. YES.
19 Q. AND WHAT DOES IT WANT TO KNOW AND HOW WOULD
20 MR. BOEKEN DO ON THAT SCALE, PLEASE?
21 A. WELL, IT DEALS WITH QUESTIONS -- A LOT OF MY
22 QUESTIONS, REALLY, CAME FROM THE FAGERSTROM. THESE ARE
23 QUESTIONS RELATING TO PHYSICAL DEPENDENCE AND THE PHYSICAL
24 NEED, AND SO THESE ARE THE QUESTIONS OF HOW SOON AFTER YOU
25 WAKE UP DO YOU HAVE YOUR FIRST CIGARETTE.
26 DO YOU HAVE TROUBLE REFRAINING FROM SMOKING
27 WHERE IT'S FORBIDDEN?
28 WHICH CIGARETTE WOULD YOU HATE TO GIVE UP?
1986
1 HOW MANY CIGARETTES DO YOU SMOKE PER DAY?
2 DO YOU SMOKE MORE FREQUENTLY IN THE FIRST HOURS
3 THAN LATER?
4 DO YOU SMOKE IF YOU'RE ILL?
5 THERE'S A QUESTION ABOUT NICOTINE LEVEL OF YOUR
6 USUAL CIGARETTE.
7 DO YOU INHALE?
8 AND HIS RATING IS THE HIGHEST FROM EVERY ONE OF
9 THESE ITEMS, EXCEPT, MAYBE, NICOTINE LEVEL OF THE BRAND OF
10 HIS CIGARETTE, WHICH DEPENDS WHEN YOU RATE IT.
11 SO OUT OF A SCORE OF 11, HE WOULD HAVE EITHER A
12 9 OR A 10, WHICH IS VERY HIGH ON THE ADDICTION SCALE.
13 Q. AND THAT'S SPECIFICALLY DESIGNED FOR NICOTINE
14 ADDICTION?
15 A. YES.
16 Q. NOW, THIS OTHER SCALE, THE DSM-IV --
17 A. YES.
18 Q. -- THAT WAS NOT DESIGNED FOR NICOTINE
19 ADDICTION?
20 A. RIGHT. THAT WAS DESIGNED FOR DRUG DEPENDENCE
21 IN GENERAL, AND IT HAS BEEN APPLIED TO NICOTINE. SOME OF THE
22 QUESTIONS ARE NOT ASKED IN A WAY THAT'S DIRECTLY RELEVANT TO
23 SMOKING, BUT IF YOU LOOK AT THE INTENT OF THE QUESTIONS, THEN
24 YOU CAN MAKE IT RELEVANT.
25 Q. IN YOUR VIEW, AND IN YOUR LIFE, YOU USE YOUR
26 OWN THAT WAS DEVELOPED, DERIVED FROM FAGERSTROM, RIGHT?
27 A. WELL, THE ONE I USE IS DERIVED FROM FAGERSTROM,
28 BUT ALSO DEALS WITH SOME OF THE ISSUES IN THE DSM-IV.
1987
1 Q. DO YOU EVER USE THE DSM-IV YOURSELF WHEN IT

2 COMES TO DIAGNOSING ADDICTION?
3 A. NO. I DON'T USE IT, BUT I CERTAINLY DEAL WITH
4 IT A LOT IN RESEARCH ISSUES BECAUSE IT COMES UP A LOT.
5 PEOPLE SOMETIMES TRY TO MAKE COMPARISONS BETWEEN THE
6 FAGERSTROM AND DSM-IV.
7 Q. WOULD YOU TELL THE JURY JUST A LITTLE ABOUT
8 WHAT THE CRITERIA ARE UNDER THE DSM-IV AND WHERE YOU THINK
9 MR. BOEKEN FITS IN THERE, PLEASE?
10 A. YES. THE GUIDELINES FOR THE DSM-IV IS THAT YOU
11 NEED TO MEET THREE OF THE CRITERIA, AND I THINK THERE ARE A
12 TOTAL OF SEVEN. A PERSON'S GOT TO MEET THREE OF THEM TO BE
13 DIAGNOSED AS DRUG DEPENDENT.
14 THE FIRST ONE IS TOLERANCE, WHICH IS DEFINED BY
15 NEEDING INCREASING AMOUNTS OF THE SUBSTANCE TO ACHIEVE A
16 DESIRED EFFECT OR A MARKETEDLY DIMINISHED EFFECT WITH
17 DIMINISHED USE OF THE SAME AMOUNT.
18 WELL, FOR TOBACCO, EVERYONE WHO'S SMOKING TWO
19 PACKS A DAY HAS DEVELOPED TOLERANCE, BECAUSE IF A PERSON WAS
20 A NOVICE AND THEY TRIED TO SMOKE TWO PACKS A DAY, THEY'D BE
21 AS SICK AS COULD BE. SMOKING TWO PACKS A DAY MEANS YOU'RE
22 TOLERANT TO A LOT OF EFFECTS.
23 AS I TALKED ABOUT BEFORE, EVERY SINGLE DAY, A
24 SMOKER GOES THROUGH A CYCLE WHERE THE FIRST CIGARETTE IS MOST
25 INTENSE. CIGARETTES GET LESS INTENSE THROUGHOUT THE DAY, AND
26 EVEN THEY HAVE MUCH LESS EFFECT LATER ON. YOU GO TO SLEEP,
27 NICOTINE LEVELS DROP IN THE BRAIN, AND THEN YOU'RE LESS
28 TOLERANT IN THE MORNING. SO EVERY SINGLE DAY TOLERANCE
1988
1 OCCURS.
2 SO IF YOU LOOK AT FROM EITHER OF THOSE
3 PERSPECTIVES, MR. BOEKEN, AS A TWO-PACK-A-DAY SMOKER HAS MET
4 THE TOLERANCE CRITERIA.
5 THE SECOND ONE IS WITHDRAWAL SYMPTOMS. SO DO
6 YOU EXPERIENCE THE CHARACTERISTIC WITHDRAWAL SYMPTOMS FROM
7 THE SUBSTANCE?
8 AND MR. BOEKEN HAD IRRITABILITY, CRAVING,
9 PROBLEMS GETTING ALONG WITH PEOPLE. HE MET A NUMBER OF THE
10 CRITERIA FOR WITHDRAWAL SYMPTOMS.
11 THE THIRD ONE IS, A SUBSTANCE OFTEN TAKEN IN
12 LARGER AMOUNTS OVER A LONGER PERIOD OF TIME THAN WAS
13 INTENDED.
14 WELL, AS FOR ALL DRUGS OF ABUSE, WHEN YOU TRY
15 TO QUIT WHEN YOU WANT TO BE A NON-USER, AND YOU CONTINUE TO
16 USE, BY DEFINITION, YOU'RE USING MORE THAN YOU INTEND.
17 NOW, YOU RARELY ASK PEOPLE -- EXCEPT MAYBE
18 ALCOHOLICS -- BUT YOU DON'T ASK A HEROIN ADDICT, HOW MUCH
19 HEROIN DID YOU INTEND TO USE VERSUS WHAT YOU USED. AND MOST
20 SMOKERS EITHER -- MOST SMOKERS WHO DON'T WANT TO SMOKE FIVE
21 CIGARETTES A DAY, SMOKE 20. THEY WOULD RATHER BE A
22 NON-SMOKER AND TRY TO QUIT. BUT WHENEVER SOMEONE'S TRIED TO
23 QUIT, BY DEFINITION, THEY ARE SMOKING MORE THAN THEY LIKE TO,
24 AND SO HE MEETS THAT.
25 A PERSISTENT DESIRE OR UNSUCCESSFUL EFFORTS TO
26 CUT DOWN OR CONTROL SUBSTANCE USE.
27 WELL, MR. BOEKEN, OBVIOUSLY, HAD NUMEROUS
28 ATTEMPTS TO TRY TO QUIT.
1989
1 A GREAT DEAL OF TIME IS SPENT IN ACTIVITIES
2 NECESSARY TO OBTAIN THE SUBSTANCE, USE IT OR RECOVER FROM
3 IT'S EFFECTS.
4 WELL, THERE ARE TWO ISSUES HERE THAT ARE MOST
5 RELEVANT TO SMOKING. ONE IS, IF YOU GET UP IN THE MIDDLE OF
6 THE NIGHT, OR IF YOU HAVE TO GO OUT TO BUY CIGARETTES TO MAKE

7 SURE THEY'RE THERE THE NEXT DAY, IF YOU'RE ALWAYS THINKING
8 ABOUT YOUR CIGARETTES, ABOUT YOUR DRUG SUPPLY, THEN THAT IS
9 SPENDING TIME, EXCESSIVE AMOUNTS OF TIME.
10 IT'S ALSO BEEN ARGUED WITH RESPECT TO SMOKING
11 THAT IF YOU ARE SOMEONE WHO SMOKES TWO PACKS A DAY, LIKE A
12 CHAIN-SMOKER, YOU ARE SMOKING EVERY 20 TO 30 MINUTES ALL DAY
13 LONG. AND THAT ITSELF IS USING A TREMENDOUS AMOUNT OF TIME
14 IN A DAY. SO SOME PEOPLE HAVE ARGUED THAT CHAIN-SMOKING
15 WOULD MEET THE CRITERIA FOR A GREAT DEAL OF TIME SPENT USING
16 SUBSTANCE.
17 THE NEXT ONE IS, IMPORTANT SOCIAL OCCUPATIONAL
18 OR RECREATIONAL ACTIVITIES ARE GIVEN UP OR REDUCED BECAUSE OF
19 SUBSTANCE USE.
20 WELL, I DON'T KNOW. HE SAID THAT THERE WERE --
21 THAT HE HAD TROUBLE NOT SMOKING WHERE IT WAS FORBIDDEN. WE
22 DIDN'T ASK HIM IF HE AVOIDED PLACES; DID HE NOT GO TO THE
23 THEATER BECAUSE HE COULDN'T SMOKE. THAT'S ONE SORT OF THING
24 PEOPLE SOMETIMES SAY THEY GIVE UP.
25 THERE IS ONE TIME HE TRIED TO QUIT THAT I
26 THOUGHT MIGHT BE CONSISTENT WITH THIS, WHICH IS WHEN A
27 GIRLFRIEND WANTED HIM NOT TO BE A SMOKER, AND HE TRIED TO
28 QUIT FOR A COUPLE WEEKS AND COULDN'T STAY QUIT AND STARTED
1990
1 SMOKING AGAIN AND LOST HIS GIRLFRIEND. SO THAT MIGHT BE
2 CHOOSING TO SMOKE OVER HAVING A GIRLFRIEND. IT WOULD BE
3 CONSISTENT WITH THAT.
4 AND THEN THE LAST ONE IS, SUBSTANCE IS BEING
5 USED DESPITE A KNOWLEDGE OF HAVING HAD A PERSISTENT OR
6 RECURRENT PHYSICAL OR PSYCHOLOGICAL PROBLEM THAT'S LIKELY TO
7 HAVE BEEN CAUSED BY THE SUBSTANCE.
8 WELL, HE KEPT ON SMOKING WHEN HE HAD
9 BRONCHITIS, EVEN THOUGH HE KNEW BRONCHITIS WAS FROM SMOKING.
10 AND CERTAINLY, AT THE END, HE KEPT ON SMOKING AFTER HE
11 DEVELOPED LUNG CANCER, EVEN THOUGH HE KNEW HIS LUNG CANCER
12 WAS CAUSED BY THE SMOKING.
13 SO I THINK, DEPENDING ON HOW YOU INTERPRET SOME
14 OF THESE THINGS, HE MET SIX OR ALL OF THESE CRITERIA, AND
15 CERTAINLY EXCEEDED THREE NECESSARY FOR THE DIAGNOSIS OF
16 DEPENDENCE.
17 Q. THANKS.
18 YOU'VE TOLD US YOU'VE SPENT MOST OF YOUR TIME,
19 FOR MAYBE 20 YEARS OR MORE NOW ON NICOTINE ADDICTION, YOU'VE
20 READ MR. BOEKEN'S DEPOSITIONS, PLURAL -- AND THERE WERE A
21 WHOLE BUNCH OF THEM, WEREN'T THERE?
22 A. YES.
23 Q. AND YOU READ HIS SMOKING HISTORY AND THE TESTS
24 THAT HE TOOK -- YOUR TESTS THAT HE TOOK.
25 ON THE ISSUE OF WHETHER HE'S ADDICTED TO
26 NICOTINE OR NOT ADDICTED TO NICOTINE, IS IT EVEN A CLOSE
27 CALL?
28 A. NO. HE IS VERY HIGH ON THE DEPENDENT SCALE, IN
1991
1 MY MIND. IF THERE'S A SCALE OF HOW ADDICTED YOU ARE, HE'S AT
2 THE UPPER END.
3 Q. I'VE GOT A COUPLE OF LAST THINGS TO TALK TO YOU
4 ABOUT NOW.
5 THERE ARE BAD THINGS THAT CAN HAPPEN TO PEOPLE
6 FROM SMOKING CIGARETTES. AND ONE OF THE BAD THINGS THAT CAN
7 HAPPEN IS THAT THEY CAN GET LUNG CANCER AND DIE.
8 NOW, DO YOU HAVE AN OPINION -- THIS ISN'T
9 MR. BOEKEN RIGHT NOW -- DO YOU HAVE AN OPINION, GENERALLY,
10 ABOUT WHETHER PEOPLE WHO SMOKE TRULY UNDERSTAND THE RISKS OF
11 WHAT THEY'RE DOING?

12 A. YES.
13 Q. WHAT IS THAT OPINION?
14 A. THEY UNDERESTIMATE THE RISK --
15 MR. CARLTON: OBJECT TO THE FOUNDATION, YOUR HONOR.
16 THE COURT: YOU CAN CROSS-EXAMINE HIM ON THIS ONE.
17 Q. BY MR. PIUZE: WHY DO YOU SAY THAT?
18 A. WELL, FIRST OF ALL, WHEN YOU ASK SMOKERS AND
19 YOU COMPARE THEIR ESTIMATES OF THE RISKS OF SMOKING TO
20 ESTIMATES OF NON-SMOKERS, NON-SMOKERS RATE THE RISKS HIGHER
21 THAN SMOKERS.
22 IF YOU ASK SMOKERS ABOUT THE RISKS OF SMOKING
23 FOR OTHER SMOKERS COMPARED TO THEMSELVES, THEY RATE THE RISKS
24 AS BEING HIGHER FOR OTHER SMOKERS COMPARED TO THEM. SO MOST
25 SMOKERS FEEL THAT THEY ARE NOT AT AS HIGH A RISK FROM DISEASE
26 AS OTHER SMOKERS ARE.
27 NOW, THERE ARE DIFFERENT REASONS FOR THIS IN
28 DIFFERENT PEOPLE'S MINDS. IN SOME CASES, ESPECIALLY FOR
1992
1 KIDS, THEY SAY, WELL, I HAVEN'T BEEN SMOKING VERY LONG. AND
2 IT TAKES A LONG TIME TO GET SICK. AND SO -- AND I'LL STOP
3 BEFORE I GET SICK. THE PROBLEM IS, THAT OFTEN IT DOESN'T
4 HAPPEN BECAUSE PEOPLE ARE ADDICTED AND THEY DON'T STOP.
5 A SECOND THING PEOPLE TELL THEMSELVES IS, AS
6 LONG AS I'M NOT FEELING SICK, I'M NOT COUGHING, I'M NOT
7 FEELING SICK, THEN I'M OKAY, AND IF I START FEELING SICK,
8 THEN I'LL QUIT.
9 THE PROBLEM WITH THAT IS THAT IT'S TOO LATE.
10 BECAUSE THE FIRST PRESENTATION OF HEART DISEASE IS A HEART
11 ATTACK OR SUDDEN DEATH. IF YOU GET LUNG CANCER, IT'S TOO
12 LATE, BECAUSE IT'S INCURABLE. YOU HAVE EMPHYSEMA, YOU
13 ALREADY HAVE LOST MOST OF YOUR LUNGS. BUT PEOPLE DON'T
14 REALIZE THAT THEY -- JUST PEOPLE THINK IF THEY START FEELING
15 BAD AND THEY QUIT, THEY'LL BE OKAY.
16 SMOKERS -- WHAT WAS THE OTHER -- SMOKERS ALSO
17 THINK, SOMETIMES, THAT IF THEY CHANGE THEIR BRANDS, THEY CAN
18 REDUCE HEALTH RISKS. FOR EXAMPLE, IF THEY SWITCH TO A
19 LOWER-YIELD CIGARETTE, SMOKERS THINK THAT A LOW-YIELD
20 CIGARETTE IS LESS HAZARDOUS. IF SOMEONE SAYS, WELL -- OR
21 SOMEONE FEELS THAT THEY'RE ADDICTED AND THERE'S NO NEED TO
22 KEEP ON USING A CIGARETTE, BUT SOMEONE SAYS, HERE'S A WAY TO
23 MAKE IT LESS HAZARDOUS, A SMOKER MIGHT SAY, WELL, I'LL SMOKE
24 THOSE, AND I'LL FEEL BETTER BECAUSE I'M NOT HURTING MYSELF AS
25 MUCH.
26 WITHOUT KNOWING THAT THERE REALLY IS NO
27 DIFFERENCE IN EXPOSURE AT ALL, BUT THEY THINK THAT BECAUSE
28 THAT'S WHAT ADVERTISING LOOKS LIKE. IT LOOKS LIKE THEY'RE
1993
1 LOW-YIELD BRANDS THAT HAVE LESS OF TAR AND LESS OF
2 NICOTINE --
3 MR. CARLTON: OBJECTION, YOUR HONOR. PREEMPTION AND
4 EXPERTISE.
5 THE COURT: THIS ISN'T A QUESTION OF PREEMPTION. THIS
6 IS A QUESTION OF EFFECT.
7 OVERRULED.
8 THE WITNESS: SO SMOKERS, WHEN THEY SEE ADVERTISEMENTS
9 FOR DIFFERENT CIGARETTES, SOME SAY, THESE ARE LOWER TAR AND
10 LOWER IN NICOTINE, AND THE OBVIOUS IMPLICATION TO ANYBODY IS
11 THAT THESE WOULD BE LESS HAZARDOUS. SO SMOKERS FEEL THAT
12 WAY, AND SOME SMOKERS SWITCH TO THOSE INSTEAD OF QUIT
13 SMOKING.
14 Q. BY MR. PIUZA: OKAY. YOU TOLD THE JURY YOU
15 READ MR. BOEKEN'S DEPOSITION.
16 HE HASN'T TESTIFIED HERE YET, BUT HE GAVE

17 INDICATIONS OF KNOWING THAT SMOKING SURE WAS NOT GOOD FOR HIS
18 BRONCHITIS, DIDN'T HE?

19 A. YES.

20 Q. WE'VE HEARD FIGURES HERE, I BELIEVE -- TELL ME
21 IF THIS SOUNDS RIGHT TO YOU -- THERE'S 400,000 DEATHS A YEAR
22 HERE IN THIS COUNTRY FROM TOBACCO-RELATED ILLNESSES.

23 DOES THAT SOUND ABOUT RIGHT?

24 A. THAT IS CORRECT.

25 Q. 15 PERCENT OF LONG-TERM MALE SMOKERS WILL GET
26 LUNG CANCER?

27 A. THAT'S RIGHT. IT'S ONE IN EIGHT. IT'S ABOUT
28 THE SAME RATE OF BREAST CANCER IN WOMEN.

1994

1 Q. NOW, YOU KNOW, ANY HUMAN BEING WALKING AROUND
2 NOWADAYS, YOU GO INTO A RESTAURANT OR BAR OR AN OFFICE
3 BUILDING OR SUPERMARKET, AND THERE'S SOME LITTLE SIGN
4 SOMEPLACE THAT SAYS, THE STATE OF CALIFORNIA HAS DETERMINED
5 THE FOLLOWING THINGS MAY CAUSE CANCER.

6 YOU'VE SEEN THOSE KINDS OF SIGNS, HAVEN'T YOU?

7 A. YES.

8 Q. AND THOSE KINDS OF WARNINGS ARE EVERYWHERE,
9 AREN'T THEY?

10 A. YES.

11 Q. BASED ON ALL OF YOUR WORK WITH PEOPLE WHO ARE
12 ADDICTED TO NICOTINE, DOES ANYONE HAVE A CLUE THAT THERE IS A
13 ONE IN A 15 PERCENT CHANCE, 15 PERCENT, NOT ONE IN A THOUSAND
14 OR ONE IN 10,000, BUT ONE IN EIGHT SHOT OF DYING OF LUNG
15 CANCER IF YOU'RE A GUY?

16 MR. CARLTON: OBJECTION. ARGUMENTATIVE.

17 THE COURT: OVERRULED. YOU CAN TAKE HIM ON CROSS.

18 THE WITNESS: VERY FEW SMOKERS HAVE ANY QUANTITATIVE
19 INFORMATION ABOUT THAT. THEY DON'T KNOW WHAT THE ABSOLUTE
20 RISKS ARE. THEY HAVE TROUBLE COMPARING THE RISKS OF SMOKING
21 TO OTHER THINGS.

22 SOME PEOPLE THINK THAT EATING FOOD WITH
23 INSECTICIDES IS A COMPARABLE RISK, FOR EXAMPLE, TO SMOKING
24 CIGARETTES. IN ONE CASE, THE CHANCE OF LUNG CANCER IS ONE IN
25 50,000. CANCER IN GENERAL IS ONE IN 50,000. ANOTHER CASE IS
26 ONE IN EIGHT. BUT PEOPLE HAVE A HARD TIME DISTINGUISHING
27 THOSE. SO IN GENERAL, SMOKERS DO NOT HAVE A FEEL FOR HOW
28 RISKY SMOKING IS.

1995

1 Q. WHAT PERCENTAGE OF LONG-TERM SMOKERS -- I'M NOT
2 LOOKING FOR ABSOLUTE NUMBERS -- WE'VE BEEN OVER THE 400,000.
3 THIS IS PERCENTAGES NOW.

4 WHAT PERCENTAGE OF LONG-TERM SMOKERS DIE EARLY
5 BECAUSE OF THE SMOKING?

6 A. CURRENT ESTIMATES ARE ONE IN TWO, 50 PERCENT,
7 WITH AN AVERAGE LOSS OF SEVEN YEARS OF LIFE.

8 Q. AND FOR THOSE OTHER 50 PERCENT THAT DON'T HAVE
9 A LOSS OF LIFE, WHAT PERCENTAGE OF THEM HAVE SERIOUS HEALTH
10 CONSEQUENCES?

11 A. WELL, MANY ARE IMPAIRED BECAUSE THEY HAVE, SAY,
12 EMPHYSEMA, SO THEY'RE SHORT OF BREATH. THEY HAVE MORE
13 INFECTIONS. THEY CAN HAVE HEART DISEASE AND DIE OF SOME
14 OTHER KIND OF CANCER. I DON'T HAVE A PERCENTAGE, BUT THE
15 CHANCES OF SOMEONE WHO'S A LIFELONG SMOKER HAVING SOME
16 SMOKING-RELATED DISEASE BY THE TIME THAT THEY'RE ELDERLY IS
17 VERY HIGH.

18 Q. IS THERE SOME KIND OF A TERM THAT'S USED TO
19 EXPLAIN OR DESCRIBE HOW A PERSON EITHER DOESN'T UNDERSTAND
20 THE RISK OR DOESN'T ADMIT THE RISK TO HIM OR HERSELF OR
21 SOMEHOW TRIES TO AVOID THINKING ABOUT THE RISK?

22 A. YES.

23 Q. WHAT?

24 A. WELL, THE TERMS, DENIAL AND RATIONALIZATION,
25 ARE TERMS THAT ARE USED IN DRUG ABUSE BROADLY, NOT JUST FOR
26 SMOKING. AND WHAT THAT MEANS IS THAT -- THAT IS, A
27 DRUG-ADDICTED PERSON, SAY, A SMOKER, WANTS TO KEEP ON USING
28 THE DRUG. IF IT'S A THING THAT'S REALLY A VERY RISKY THING
1996

1 TO DO, THEN IT'S HARD FOR THEM TO RATIONALIZE IT THEMSELVES.

2 HOW CAN SOMEONE WHO'S NOT SUICIDAL TAKE A 50 PERCENT CHANCE

3 OF DYING FOR THEIR HABIT?

4 IT'S VERY HARD TO DO THAT, TO MAKE THAT CHOICE.

5 MOST PEOPLE WOULD NOT CHOOSE TO TAKE THE RISKS FROM SMOKING.

6 SO WHAT THEY DO IS THEY FIND WAYS TO MINIMIZE THE RISK. AND

7 SO THEY DO THINGS TO SAY, WELL, THE RISK IS EXAGGERATED.

8 ONE THING THAT OCCURS IS THAT WHEN THERE IS A

9 MIXED MESSAGE. SAY, FOR EXAMPLE, IF THE HEALTH COMMUNITY

10 SAYS SMOKING IS BAD AND YOU SEE AN ADVERTISEMENT --

11 MR. CARLTON: OBJECTION, YOUR HONOR. THERE, WE HAVE

12 PREEMPTION.

13 THE COURT: NO. IT'S NOT PREEMPTION.

14 OVERRULED.

15 THE WITNESS: IF YOU SEE AN ADVERTISEMENT SHOWING

16 SMOKERS THAT LOOK HEALTHY, VIGOROUS, HAVING A GOOD TIME, THEN

17 THAT'S A MIXED MESSAGE. IT'S BEEN SHOWN THAT IF YOU SHOW

18 POSITIVE IMAGES, THAT REDUCES THE PERCEPTION OF RISK TO

19 HAZARDS. SO THAT'S ONE AREA.

20 THE SECOND THING WOULD BE --

21 MR. LEITER: I'M SORRY, YOUR HONOR. WE NEED TO

22 APPROACH.

23 THE COURT: ALL RIGHT.

24 LADIES AND GENTLEMEN, WE HAVE SOMETHING ELSE WE

25 NEED TO TALK ABOUT, AND I THINK WE NEED TO DISCUSS IT NOW.

26 SO LET'S TAKE A 15-MINUTE BREAK, AND LET ME --

27 THIS MAY BE A SOMEWHAT EXTENDED DISCUSSION, AND I'LL SEE YOU

28 IN 15 MINUTES.

1997

1 THANK YOU.

2

3 (THE FOLLOWING PROCEEDINGS WERE HELD

4 IN OPEN COURT OUT OF THE PRESENCE

5 OF THE JURY:)

6

7 THE COURT: WE ARE OUTSIDE THE PRESENCE AND ON THE

8 RECORD.

9 MR. LEITER.

10 MR. LEITER: YOUR HONOR, THE ISSUE OF NEUTRALIZATION,
11 WHICH IS THE USE OF HEALTHY, SEXY, HAPPY PEOPLE IN ADS TO
12 UNDERCUT THE SURGEON GENERAL'S WARNINGS IS PRECISELY
13 ADDRESSED IN THE CIPOLLONE CASE. IT IS EXPLICITLY PREEMPTED,
14 AND THAT'S EXACTLY WHAT THAT WITNESS HAS JUST TESTIFIED TO.

15 IT IS ON THE FACE OF THE CIPOLLONE CASE

16 PREEMPTED. IT'S NOT A CLOSE CALL. AND THAT'S EXACTLY WHAT

17 HE'S TESTIFYING TO. IT'S IMPROPER TESTIMONY, AND WE'RE GOING

18 TO NEED TO MOVE FOR A MISTRIAL.

19 THE COURT: MR. PIUZE.

20 I'LL TAKE THAT AS A MOTION, BY THE WAY.

21 MR. LEITER: YES. THANK YOU, YOUR HONOR.

22 THE COURT: ALL RIGHT.

23 MR. PIUZE: I SAID ONCE EARLIER IN A TOTALLY DIFFERENT
24 CONTEXT THAN THIS CASE SOMEPLACE ON THE RECORD, I'D ALWAYS
25 RATHER BE SAFE THAN SORRY, AND I'M ALWAYS GOING TO BE RATHER
26 SAFE THAN SORRY. AND IF THEY THINK IT'S NOT EVEN A CLOSE

27 CALL -- I DON'T KNOW WHAT THAT REALLY MEANS IN THE REAL
28 WORLD -- BUT I'D RATHER NOT RISK IT ON APPEAL. THAT'S MY
1998

1 VIEW.

2 AND SO I DON'T WANT A MISTRIAL, AND I DON'T
3 AGREE WITH THEIR POSITION, BUT I WANT TO BE AS SAFE AND
4 CAUTIOUS AS I POSSIBLY CAN BE, AND SO I WANT TO DO IT THE
5 BEST WAY TO PROTECT MY CASE AND MY RECORD, BECAUSE I DON'T
6 WANT TO HAVE TO START THIS ALL OVER AGAIN, GO THROUGH THIS
7 AGAIN. SO --

8 THE COURT: WELL, I CAN'T TELL YOU HOW TO PROTECT YOUR
9 CASE. YOU'RE GOING TO HAVE TO MAKE YOUR OWN DECISION ALONG
10 THOSE LINES.

11 MR. PIUZE: I'M NOT ASKING.

12 THE COURT: THE COURT WILL RULE AS ACCORDING TO ITS
13 RULE OF THE LAW.

14 MR. PIUZE: I'M NOT ASKING.

15 WHAT I WOULD SUGGEST HERE -- AND I WANT WHOEVER
16 READS THIS IN THE FUTURE TO UNDERSTAND -- THIS IS ME BEING
17 SAFE THAN SORRY, BECAUSE I HAVE HAD TOO MANY CASES REVERSED
18 IN THE PAST.

19 IN THIS INSTANCE, BECAUSE THIS OF SO LITTLE
20 SIGNIFICANCE TO ME, I'D ASK THAT THAT LITTLE PART OF THE
21 TESTIMONY BE STRUCK, THAT THERE BE NO MISTRIAL. AND I'M NOT
22 SAYING THIS, AGAIN, AS ANY ADMISSION OF ANYTHING, BUT I'M
23 DOING THIS TO BE SAFE. THAT'S WHAT I'D SUGGEST.

24 THE COURT: THE COURT WILL STATE ITS POSITION HERE,
25 THEN THE COURT WILL INSTRUCT THE JURY TO DISREGARD WHAT IT
26 HEARD AS TO ADVERTISEMENTS FROM THIS PARTICULAR WITNESS.

27 BUT IT WOULD DENY THE MISTRIAL ON LEGAL GROUNDS
28 AND NOT FOR THE REASONS THAT THE COURT IS GOING TO ACT HERE.

1999

1 THE QUESTION HERE PRESENTED IS, WHY DO PEOPLE
2 KEEP SMOKING. THE ANSWER FROM THIS EXPERT IS, THEY KEEP
3 SMOKING BECAUSE, IN PART, THEY ARE IN DENIAL. AND ONE OF THE
4 REASONS THAT THEY ARE IN DENIAL IS ADVERTISING. THAT'S WHAT
5 HE HAS SAID. THAT DOES NOT, IN THIS COURT'S VIEW, FALL
6 ANYWHERE NEAR THE PROHIBITIONS OF CI POLLONE.

7 SO THE MOTION FOR MISTRIAL IS DENIED.

8 ON THE OTHER HAND, THE COURT WILL INSTRUCT THE
9 JURY, BECAUSE I THINK BOTH PARTIES WOULD AGREE, THAT AN
10 INSTRUCTION WOULD BE APPROPRIATE EVEN THOUGH THE COURT DOES
11 NOT NECESSARILY THINK IT IS.

12 MR. PIUZE: YOUR HONOR, I DON'T WANT YOU TO -- I DON'T
13 WANT TO GET IN A POSITION HAVING THE COURT THINK I'M
14 UNDERCUTTING IT EITHER, BECAUSE I'M NOT DISAGREEING. I HOPE
15 I'VE MADE THAT CLEAR. I'M NOT DISAGREEING WITH THE COURT'S
16 RULING. I'M JUST PUTTING UP MY BARRIERS FOR LATER ON.

17 THE COURT: OKAY. LET'S GET TO THE POINT OF THIS
18 DOCUMENT, SINCE WE'VE GOT THE JURY OUT.

19 MR. LEITER: YOUR HONOR, ONE MORE ISSUE. AND WITHOUT
20 WITHDRAWING OUR PREVIOUS MOTION FOR THE RECORD.
21 WE WOULD ASK THAT THE COURT AFFIRMATIVELY
22 INSTRUCT THE JURY THAT IT MAY NOT FIND LIABILITY IN THIS CASE
23 BASED ON ANY ACCUSATION OR ANY EVIDENCE THAT HEALTHY IMAGES
24 IN ADS UNDERCUT THE HEALTH WARNINGS MANDATED BY THE CONGRESS.

25 THE COURT: WELL, THAT WASN'T THE NATURE OF THIS
26 TESTIMONY, AND I'M NOT GOING TO MAKE SUCH AN INSTRUCTION.
27 LET ME GO GET THIS DOCUMENT AND TAKE A LOOK AT
28 IT.

2000

1 (SHORT PAUSE.)

2

3 THE COURT: ALL RIGHT. WHY IS THIS PARTICULAR
4 DOCUMENT BEING OFFERED?
5 MR. PIUZE: LET ME FIND IT NOW.
6 THE COURT: THIS WOULD BE 0003048.
7 MR. PIUZE: THE PART OF THE DOCUMENT I'M INTERESTED IN
8 IS THE VERY LAST PART ON PAGE 2 HAVING TO DO WITH SMOKING AND
9 FREE CHOICE. WE CAN'T DEFEND -- WE CAN'T DEFEND CONTINUED
10 SMOKING AS FREE CHOICE IF THE PERSON WAS ADDICTED.
11 NOW, THAT'S EXACTLY WHAT WE'RE TALKING ABOUT
12 HERE, AND I AM SAYING THAT THIS IS A PIECE OF EVIDENCE WHICH
13 SHOWS THAT PHILIP MORRIS AND ITS CO-CONSPIRATORS, AND
14 PHILIP MORRIS THROUGH THIS ORGANIZATION WHICH IT BELONGED TO,
15 KNEW DARN WELL THAT PEOPLE WERE ADDICTED, KNEW DARN WELL THAT
16 THAT ADDICTION WAS KILLING THEM, AND WERE, IN EFFECT,
17 CONCOCTING STORIES SO THAT THEY WOULD NOT ONLY BECOME
18 ADDICTED TO START, THEN, BUT THEN WOULD BE DENIED
19 COMPENSATION FOR IT LATER ON.
20 IN OTHER WORDS, THIS IS PART OF A SCHEME THAT'S
21 BEEN GOING ON AND ON FOR A LONG, LONG TIME.
22 MR. LEITER: WELL, WE CERTAINLY UNDERSTAND THE REASON
23 THAT THE PLAINTIFF WANTS TO INTRODUCE THE DOCUMENT. THE
24 PROBLEM IS, THESE ARE STATEMENTS THAT ARE BEING ATTRIBUTED BY
25 THE AUTHOR OF THE DOCUMENT TO SHOOK, HARDY, THE LAW FIRM,
26 WHICH THE AUTHOR OF THIS DOCUMENT HAS HEARD FROM SOMEBODY
27 ELSE.
28 SO THERE ARE THREE LAYERS IN THE CHAIN -- TO
2001
1 MIX MY METAPHORS -- THREE LINKS IN THE CHAIN BETWEEN THE
2 PERSON WHO SUPPOSEDLY SPOKE THESE WORDS AND THE AUTHOR
3 RECORDING THEM IN THIS DOCUMENT. WE'RE NOT ARGUING
4 RELEVANCE. WE'RE ARGUING IT'S TRIPLE HEARSAY.
5 THE COURT: ALL RIGHT. I UNDERSTAND THAT.
6 THE COURT BELIEVES THAT THIS DOCUMENT IS BEING
7 OFFERED FOR A NON-HEARSAY PURPOSE TO EXPLAIN CONDUCT RATHER
8 THAN FOR THE TRUTH OF THE MATTER ASSERTED AND, THEREFORE,
9 WOULD OVERRULE THE OBJECTION.
10 OKAY. I TOLD THE JURY --
11 WE'LL TAKE A BREAK UNTIL QUARTER 'TILL.
12 AND WE MIGHT -- WELL, I WAS JUST THINKING,
13 THAT'S NOT GOING TO BE ENOUGH FOR YOU.
14 ALL RIGHT. TELL THE JURY, PLEASE, THAT WE'LL
15 MEET THEM AT 10 MINUTES TILL, AND THIS WILL BE MY AFTERNOON
16 BREAK.
17 MR. PIUZE: YOUR HONOR, THIS WILL ONLY TAKE 30
18 SECONDS.
19 EARLIER IN OUR PROCEEDINGS IN LIMINE, I HAD
20 MENTIONED, NOT UNDER COURT COMPUNCTION, BUT VOLUNTARILY, WHEN
21 LAW FIRMS WERE MENTIONED IN THESE DOCUMENTS, I'D TAKE THE
22 NAMES OUT. I AGREE TO THAT, IF YOU DON'T -- IF THE COURT
23 DOESN'T HAVE ANY OBJECTION, THAT'S WHAT I WILL DO. I'LL TAKE
24 THE NAME SHOOK, HARDY OUT OF THERE.
25 THE COURT: OKAY. IT'S NOT ESSENTIAL IN THIS
26 PARTICULAR CASE.
27
28 (RECESS.)
2002
1 THE COURT: GOOD AFTERNOON, LADIES AND GENTLEMEN.
2 THANK YOU, MA'AM.
3 ALL RIGHT. OUR JURY PANEL IS WITH US; COUNSEL
4 ARE PRESENT; AS WELL, THE WITNESS IS ON THE STAND.
5 SIR, YOU UNDERSTAND YOU'RE STILL UNDER OATH?
6 THE WITNESS: YES.
7 THE COURT: VERY WELL.

8 LADIES AND GENTLEMEN, JUST BEFORE WE TOOK THE
9 BREAK, THERE WAS SOME TESTIMONY FROM THIS WITNESS REGARDING
10 CERTAIN ADVERTISING IMAGES AND THEIR POTENTIAL EFFECTS.
11 YOU'LL RECALL THAT TESTIMONY.

12 I INSTRUCT YOU AT THIS TIME THAT WITH RESPECT
13 TO THAT TESTIMONY, I WANT YOU TO DISREGARD IT FOR ALL
14 PURPOSES AND DO NOT USE IT FOR ANY PURPOSE WHATSOEVER IN THIS
15 TRIAL.

16 THANK YOU VERY MUCH.

17 COUNSEL.

18 MR. PIUZE: THANKS.

19 Q. LAST BLOCK OF TESTIMONY HAD TO DO WITH SMOKERS
20 TRULY APPRECIATING HOW GREAT THE RISKS WERE. WE TALKED ABOUT
21 SOME STATISTICS, LIKE ONE IN 50,000 DYING OF INSECTICIDE ON
22 FRUIT, ONE IN EIGHT DYING OF LUNG CANCER, THAT KIND OF THING.
23 REMEMBER THAT?

24 A. YES.

25 Q. DO PEOPLE WHO ARE HOOKED, ADDICTED, ON ANY
26 SUBSTANCE -- LET'S NOT EVEN TALK ABOUT NICOTINE RIGHT NOW --
27 ANY SUBSTANCE, SOMETIMES TELL THEMSELVES STORIES, RATIONALIZE
28 THINGS TO THEMSELVES?

2003

1 A. YES.

2 Q. TO WHAT END, FOR WHAT PURPOSE?

3 A. WELL, IF YOU'RE NOT SUICIDAL, AND IF YOU THINK
4 YOU'RE A RATIONAL PERSON, YOU HAVE TO FIND SOME WAY TO BE
5 ABLE TO KEEP ON DOING WHAT YOU'RE DOING DESPITE OBVIOUS OR
6 APPARENT HARM.

7 SO THE WAY THAT THAT OCCURS IS PEOPLE MINIMIZE
8 THE RISK. THEY SAY, THE RISK IS NOT AS GREAT AS I'VE BEEN
9 TOLD. SO WHAT I'M DOING IS NOT REALLY AS NONSENSICAL AS IT
10 SEEMS. SO SMOKERS TEND TO MINIMIZE THE RISK TO THEMSELVES.
11 THEY MAY ACKNOWLEDGE IT IN GENERAL, BUT THEY SAY, FOR ME, I
12 KNOW I'M NOT GOING TO BE HARMED, SO IT'S OKAY THAT I DO THIS,
13 IT MAKES SENSE THAT I DO THIS.

14 Q. IF THERE IS A REASON -- AND I'M GOING TO GET TO
15 THE REASON QUICKLY -- BUT IF THERE IS A REASON OR A STRAW, A
16 RATIONALE GIVEN TO SOMEONE WHO'S HOOKED ON A DRUG, WHETHER
17 IT'S NICOTINE OR WHATEVER, DOES SOMEONE WHO'S HOOKED TEND TO
18 REACH OUT AND GRASP AT STRAWS AS A RATIONALIZATION OR A
19 REASON FOR CONTINUING?

20 A. ANYTHING THAT WILL ALLOW A PERSON ADDICTED TO A
21 DRUG TO KEEP ON USING THE DRUG, THEY WILL EMBRACE.

22 Q. NOW, I WANT TO SHOW YOU A DOCUMENT FROM 1972.

23 AND THIS IS DOCUMENT 330.00, AND ON THE BLOWUP VERSION, IT'S
24 8057.00. AND THIS -- CAN YOU READ THAT FROM WHERE YOU ARE,
25 THE BIG PRINT HERE?

26 BECAUSE THAT'S WHAT I'M INTERESTED IN.

27 A. IF YOU TURN IT TOWARD ME A LITTLE BIT, I COULD.

28 YES.

2004

1 (I.D. 330.00 - 5-1-72 MEMO)

2

3 Q. BY MR. PIUZE: NOW, THE LANGUAGE I'M INTERESTED
4 IN IS THIS (READING):

5

6 "IT HAS ALWAYS" --

7

8 THIS IS FROM A GROUP THAT CONTAINS ALL THE
9 TOBACCO COMPANIES, INCLUDING PHILIP MORRIS.

10 (READING:)

11

12 "IT HAS ALWAYS BEEN A HOLDING

13 STRATEGY CONSISTING OF CREATING DOUBT ABOUT
14 THE HEALTH CHARGE WITHOUT ACTUALLY DENYING
15 IT."
16
17 AND THAT'S THE PHRASE THAT I WANT YOU TO -- I'M
18 GOING TO ASK YOU ABOUT.
19 . . . "CREATING DOUBT ABOUT THE HEALTH CHARGE
20 WITHOUT ACTUALLY DENYING IT," OKAY?
21 A. YES.
22 Q. IN MR. BOEKEN'S DEPOSITION, DID YOU SEE
23 TESTIMONY FROM HIM ABOUT SEEING, AMONG OTHER THINGS, SEEING
24 THE CEO'S BEFORE CONGRESS SAYING THEY DIDN'T KNOW --
25 INCLUDING THE CEO OF PHILIP MORRIS -- "TO MY KNOWLEDGE, IT
26 HAS NOT BEEN PROVEN THAT CIGARETTE SMOKING CAUSES CANCER."
27 YOU SAW HIM TALK ABOUT THINGS LIKE THAT?
28 A. YES.
2005
1 Q. YOU SAW WHERE MR. BOEKEN SAID, HE BELIEVED
2 THAT, HE BELIEVES IN BIG BUSINESS, HE BELIEVED THAT KIND OF
3 THING?
4 A. YES.
5 Q. IS THAT A RATIONALIZATION?
6 A. YES. IF ONE HAS CHOICES OF TWO CONFLICTING
7 OPINIONS, THE HEALTH COMMUNITY SAYS SMOKING IS BAD FOR YOU,
8 THE TOBACCO INDUSTRY SAYS IT'S NOT BEEN PROVEN, IF YOU WANT
9 TO KEEP ON SMOKING, WHAT YOU WILL DO IS CHOOSE THE ONE THAT
10 SAYS IT'S NOT BEEN PROVEN, BECAUSE THAT ALLOWS YOU TO KEEP ON
11 SMOKING AND STILL BE A REASONABLE PERSON.
12 SO ANY ADDICT FACED WITH THAT SORT OF CHOICE
13 WOULD CHOOSE THE OPINION THAT WOULD HELP THEM KEEP ON USING
14 THE DRUG.
15 Q. IN 19 -- JUST ALONG THIS TIME LINE HERE -- IN
16 1972, WHICH WOULD HAVE BEEN ALMOST, YOU KNOW, HALFWAY BETWEEN
17 HIS FIRST TWO QUIT ATTEMPTS -- IN 1972, IF THE IDEA WAS TO
18 CREATE DOUBT ABOUT THE HEALTH CHARGE WITHOUT ACTUALLY DENYING
19 THE HEALTH CHARGE, DOES THAT INTERFERE WITH MR. BOEKEN'S
20 ABILITY TO QUIT OR HIS ABILITY TO GIVE IT 100 PERCENT?
21 A. IT'S THE SAME ISSUE. WHEN YOU CREATE A
22 QUESTION ABOUT WHETHER SOMETHING IS REALLY HARMFUL, THAT'S
23 REASSURING TO SOMEONE WHO WOULD LIKE TO KEEP ON DOING THE
24 BEHAVIOR.
25 Q. THANK YOU.
26 WOULD YOU FLIP THAT ON NOW, PLEASE.
27 I WANT TO SHOW YOU -- THIS IS THE LAST DOCUMENT
28 I'M GOING TO USE, AND THIS IS GOING TO BE MY LAST AREA OF
2006
1 QUESTIONING. THIS IS EXHIBIT 388.00
2
3 (I.D. 388.00 - 9-9-80 MEMO)
4
5 MR. PIUZE: THIS IS A SEPTEMBER 9, 1980 MEMO BETWEEN
6 KNOPICK TO KLOEPFER.
7 THIS IS AT THE TOBACCO INSTITUTE, WHICH
8 PHILIP MORRIS WAS A MEMBER, AND I'D LIKE TO DIRECT YOUR
9 ATTENTION TO THE FOLLOWING ON PAGE 2.
10 THE COURT: LET ME SAY SOMETHING TO THE JURY.
11 FROM TIME TO TIME, LADIES AND GENTLEMEN, ON
12 DOCUMENTS, YOU MAY SEE BLACK MARKS ACROSS THERE. AND THOSE
13 ARE WHAT WE CALL REDACTIONS. TYPICALLY ORDERED BY THE COURT
14 BECAUSE A DOCUMENT MAY CONTAIN SOME AMOUNT OF EXTRANEOUS,
15 IRRELEVANT INFORMATION. SO OFTENTIMES, THE COURT WILL JUST
16 HAVE A CERTAIN PORTION EXTRACTED AND LEAVE THE REMAINDER OF
17 THE DOCUMENT SO THAT YOU CAN SEE IT.

18 PROCEEDED, COUNSEL.
19 MR. PIUZE: OKAY -- THANK YOU.

20 Q. 21 YEARS AGO (READING):

21
22 . . . "THE ENTIRE MATTER OF
23 ADDICTION IS THE MOST POTENT WEAPON A
24 PROSECUTING ATTORNEY CAN HAVE IN A LUNG
25 CANCER/CIGARETTE CASE. WE CAN'T DEFEND
26 CONTINUED SMOKING AS," QUOTE, "'FREE
27 CHOICE,'" CLOSED QUOTE, "IF THE PERSON WAS,"
28 QUOTE, "'ADDICTED,'" CLOSED QUOTE.

2007

1
2 ARE YOU FAMILIAR WITH THIS DOCUMENT?
3 A. YES.
4 Q. FIRST OF ALL, PUTTING ASIDE WHAT THEY CAN
5 DEFEND, FROM A SCIENTIFIC POINT OF VIEW, IS IT RIGHT THAT IF
6 SOMETHING IS ADDICTIVE, ONE OF THE THINGS THAT AN ADDICTION
7 DOES IS DESTROYS FREE CHOICE?

8 A. WELL, YES. FREE CHOICE IS REALLY CHOICE THAT
9 THAT PERSON MAKES WHEN INFLUENCED BY THEIR EXPERIENCE, THEIR
10 KNOWLEDGE, THEIR UNDERSTANDING, AND IF THERE'S A DRUG
11 DEPENDENCY INVOLVED, BY THE DRUG DEPENDENCY.

12 A PURELY RATIONAL CHOICE WOULD BE TO LOOK AT
13 THE PROS AND CONS OF SOMETHING AND JUST FIGURE OUT WHAT THE
14 PROS AND CONS ARE.

15 IF YOU ARE DEPENDENT ON A DRUG, THEN A LOT OF
16 THE FACTORS THAT ARE DRIVING YOUR DECISION ARE DRUG
17 DEPENDENCY FACTORS: THE NEED TO HAVE THE DRUG TO FEEL GOOD,
18 THE NEED TO HAVE THE DRUG TO AVOID WITHDRAWAL SYMPTOMS, THE
19 CONDITIONS THAT OCCUR FROM USING AN ACTIVE DRUG THOUSANDS OF
20 TIMES. THOSE BECOME VERY IMPORTANT DETERMINANTS OF WHAT A
21 PERSON CHOOSES TO DO.

22 SO PEOPLE STILL HAVE CHOICE, BUT THE CHOICE FOR
23 EVERYONE FOR EVERY DECISION IS INFLUENCED, AND IN THIS CASE,
24 IF IT'S INFLUENCED BY A DRUG, IT'S NOT REALLY FREE CHOICE OF
25 SOMEONE BALANCING THE RISKS AND BENEFITS AND SAYING, I CHOOSE
26 THIS.

27 Q. WHEN THE AUTHOR SAYS, "WE CAN'T DEFEND
28 CONTINUED SMOKING AS 'FREE CHOICE' IF THE PERSON WAS

2008

1 'ADDICTED,' -- PUT ASIDE ANY LEGAL STRATEGY OR THAT THE
2 DEFENSE IS IN A COURTROOM -- I'M JUST TALKING, FORGET THE
3 COURTROOM ASPECT OF IT -- DO YOU THINK THAT YOU CAN'T CALL
4 SMOKING FREE CHOICE IF THE PERSON WAS ADDICTED?
5 A. YES. BECAUSE THERE IS THE EFFECTS OF THE DRUG
6 DEPENDENCY, WHICH IS STRONGLY INFLUENCING WHAT YOU DO. THAT
7 DOESN'T MEAN YOU CAN'T QUIT, BUT IT MEANS THAT YOUR CHOICES
8 ARE STRONGLY INFLUENCED BY THE DRUG EFFECTS.

9 Q. SO AS MY FINAL PARTING SHOT HERE --
10 THE COURT: COUNSEL, "PARTING SHOT." PLEASE.

11 MR. PIUZE: I'M SORRY. NO SHOTS.

12 THE COURT: ON EITHER SIDE. THANK YOU.

13 FINAL QUESTION.

14 Q. BY MR. PIUZE: MY FINAL QUESTION.

15 THE COURT: THANK YOU, SIR.

16 Q. BY MR. PIUZE: YOU AGREE WITH WHAT THE TOBACCO
17 INSTITUTE SAID THERE IN ITS FINAL SENTENCE?

18 A. YES, I DO.

19 MR. PIUZE: THANK YOU.

20 THE COURT: VERY WELL. THANK YOU, COUNSEL.

21 MR. CARLTON.

22 MR. CARLTON: THANK YOU, YOUR HONOR.

23 THE COURT: YOUR WITNESS, SIR.

24

25 CROSS-EXAMINATION

26 BY MR. CARLTON:

27 Q. GOOD AFTERNOON, DR. BENOWITZ.

28 A. GOOD AFTERNOON.

2009

1 Q. YOU'VE NEVER TREATED MR. BOEKEN, HAVE YOU,

2 PERSONALLY?

3 A. NO.

4 Q. NEVER MET HIM?

5 A. NO.

6 Q. AND YOU HAVEN'T PERSONALLY EXAMINED HIM?

7 A. NO.

8 Q. AND YOUR OPINIONS THAT YOU EXPRESSED TODAY

9 ABOUT HIS CONDITION ARE BASED ON THE INFORMATION YOU RECEIVED

10 FROM HIS ATTORNEYS, RIGHT?

11 A. YES.

12 Q. NOW, IF A PATIENT CAME TO YOU AND HIS
13 CIRCUMSTANCES WERE EXACTLY THE SAME FOR MR. BOEKEN'S, EXCEPT
14 FOR THE FACT THAT HE DID NOT HAVE LUNG CANCER, YOU WOULD TELL
15 HIM, WOULD YOU NOT, THAT HE SHOULD QUIT SMOKING?

16 A. YES.

17 Q. BECAUSE YOU TELL ALL OF YOUR SMOKING PATIENTS
18 THAT THEY SHOULD DO THAT?

19 A. YES.

20 Q. AND YOU WOULDN'T TELL HIM IT WAS GOING TO BE
21 EASY, WOULD YOU?

22 A. NO.

23 Q. AS A MATTER OF FACT, YOU'D TELL HIM IT WAS
24 GOING TO BE OR COULD BE VERY HARD?

25 A. YES.

26 Q. AND YOU'D TELL HIM, HE MIGHT NOT SUCCEED THE
27 FIRST TIME AROUND, RIGHT?

28 A. YES. IT DEPENDS ON WHAT THEIR PAST EXPERIENCE

2010

1 HAD BEEN, BUT I MIGHT SAY THAT, YES.

2 Q. ALL RIGHT. WELL, IN MR. BOEKEN'S CASE, IF HE
3 HAD SOME PRIOR -- OR IN THIS PATIENT'S CASE, IF HE HAD PRIOR
4 QUIT ATTEMPTS, YOU WOULDN'T TELL HIM NOT TO TRY AGAIN, WOULD
5 YOU?

6 A. NO.

7 Q. YOU MIGHT EVEN TELL HIM, AS YOU TOLD US, THAT
8 IT CAN TAKE THREE, FOUR OR FIVE TIMES BEFORE YOU SUCCEED?

9 A. YES.

10 Q. RIGHT?

11 A. YES.

12 Q. AND ISN'T IT ALSO TRUE THAT WITH EACH
13 SUCCESSIVE ATTEMPT, THE CHANCES OF SUCCESS GET A LITTLE
14 BETTER?

15 A. YES.

16 Q. WOULD YOU TELL HIM THAT?

17 A. YES.

18 Q. AND YOU'D NEVER TELL HIM THAT HE COULDN'T
19 SUCCEED?

20 A. THAT'S CORRECT.

21 Q. YOU'D NEVER TELL HIM THAT DO THIS ONCE, AND YOU
22 CAN PUT IT OUT OF YOUR MIND, YOU'LL BE SMOKE-FREE FOREVER?

23 A. NO.

24 Q. BECAUSE YOU DON'T BELIEVE THAT'S TRUE?

25 A. WELL, IT COULD BE TRUE IN SOME PEOPLE. WE KNOW
26 FOR MR. BOEKEN, IT'S NOT LIKELY TO BE THE CASE.

27 Q. ALL RIGHT. AND MANY PEOPLE HAVE -- WELL, THEY

28 RELAPSE; ISN'T THAT RIGHT?

2011

1 A. YES.

2 Q. AND FOR PEOPLE LIKE THAT, YOU TELL THEM THEY'VE
3 GOT TO STAY WITH IT?

4 A. YES.

5 Q. BECAUSE STAYING SMOKE-FREE REQUIRES COMMITMENT?

6 A. YES.

7 Q. IT REQUIRES COMMITMENT EVERY DAY?

8 A. YES.

9 Q. RIGHT?

10 A. YES.

11 Q. AND A PERSON WHO DOESN'T HAVE THAT COMMITMENT
12 ISN'T LIKELY TO SUCCEED?

13 A. THAT'S CORRECT.

14 Q. ARE YOU FAMILIAR WITH ALCOHOLICS ANONYMOUS?

15 A. YES.

16 Q. ISN'T THERE A PHRASE, ONE DAY AT A TIME?

17 A. YES.

18 Q. AND DON'T THEY APPROACH THEIR WHOLE PROGRAM
19 WITH THE PHILOSOPHY THAT YOU'RE NEVER A FORMER ALCOHOLIC,
20 YOU'RE ALWAYS, EVERY DAY, A RECOVERING ALCOHOLIC?

21 A. YES.

22 Q. ISN'T THAT PRETTY MUCH TRUE WITH A LOT OF
23 SMOKERS?

24 A. YES.

25 Q. AND THEY SHOULD UNDERSTAND THAT -- THEY HAVE TO
26 UNDERSTAND THAT?

27 A. YES.

28 Q. NOW, 50 MILLION PEOPLE OR ABOUT THAT AMOUNT
2012

1 HAVE QUIT SMOKING; ISN'T THAT RIGHT?

2 A. YES.

3 Q. AND 90 PERCENT OF THOSE PEOPLE DID IT WITHOUT
4 MEDICAL AIDS?

5 A. YES.

6 Q. AND IN TERMS OF QUITTING SMOKING, IN TERMS OF
7 THE EFFORT THAT YOU NEED TO BE SUCCESSFUL AT QUITTING
8 SMOKING, IT DOESN'T MAKE ANY DIFFERENCE, DOES IT, WHETHER YOU
9 CALL IT A HABITUATION, A DEPENDENCY OR AN ADDICTION?

10 A. NO.

11 Q. THE TERM ISN'T RELEVANT TO THE EXPERIENCE OF
12 THE SMOKER?

13 A. THAT'S CORRECT.

14 Q. BUT THERE'S BEEN A LOT OF DISCUSSION TODAY
15 ABOUT ONE OF THOSE TERMS, ADDICTION.

16 ISN'T IT TRUE THAT THE TERM ADDICTION HAS HAD A
17 LOT OF DIFFERENT MEANINGS THROUGH THE YEARS?

18 A. YES.

19 Q. AND IT HAS A LOT OF DIFFERENT MEANINGS TO
20 DIFFERENT PEOPLE?

21 A. IT HAS.

22 Q. RIGHT?

23 A. YES.

24 Q. YOU TALKED TO US EARLIER TODAY ABOUT THE
25 DEFINITION OF ADDICTION THAT WAS USED IN THE 1964 SURGEON
26 GENERAL'S REPORT, DIDN'T YOU?

27 A. YES.

28 Q. AND LET ME SEE IF I CAN JUST MAKE THIS WORK.

2013

1 THERE WE ARE.

2 LET ME READ YOU -- I'LL TRY TO HIGHLIGHT FOR

3 THE -- FOR EVERYONE A PAGE OUT OF THE 1964 SURGEON GENERAL'S

4 REPORT, AND THIS IS PAGE 351, I BELIEVE.
5 AND THIS IS THE DEFINITION OF DRUG ADDICTION
6 THAT WAS USED BACK IN 1964 (READING):

7
8 "DRUG ADDICTION IS A STATE OF
9 PERIODIC OR CHRONIC INTOXICATION PRODUCED BY
10 THE REPEATED CONSUMPTION OF A DRUG (NATURAL
11 OR SYNTHETIC)."
12

13 NOW, THAT WAS THE FIRST CLAUSE, WASN'T IT?
14 A. YES.

15 Q. (READING:)

16
17 "ITS CHARACTERISTICS INCLUDE:
18 "1. AN OVERPOWERING DESIRE OR

19 NEED (COMPULSION) TO CONTINUE TAKING THE DRUG
20 AND TO OBTAIN IT BY ANY MEANS."
21

22 THAT WAS THE FIRST CRITERION THAT THE SURGEON
23 GENERAL USED?

24 A. YES.

25 Q. (READING:)

26
27 "2. A TENDENCY TO INCREASE
28 THE DOSE."

2014

1 RIGHT?

2 A. YES.

3 Q. (READING:)

4
5 "3. A PSYCHIC (PSYCHOLOGICAL)
6 AND GENERALLY A PHYSICAL DEPENDENCE ON THE
7 EFFECTS OF THE DRUG."
8

9 THAT WAS THE THIRD CRITERION?

10 A. YES.

11 Q. AND THE LAST ONE (READING):

12
13 "DETRIMENTAL EFFECT ON THE
14 INDIVIDUAL AND ON SOCIETY."
15

16 RIGHT?

17 A. YES.

18 Q. NOW, IN 1964, THE SURGEON GENERAL CONCLUDED
19 THAT NICOTINE DIDN'T SATISFY THIS DEFINITION, RIGHT?

20 A. YES.

21 Q. AND THERE WERE A NUMBER OF REASONS FOR THAT.

22 FIRST, AND MAYBE MOST IMPORTANT -- YOU TELL
23 ME -- NICOTINE DOESN'T RESULT IN INTOXICATION, IS THAT TRUE?

24 A. THAT'S CORRECT. THAT'S CORRECT.

25 Q. AND THERE'S NO DETRIMENTAL EFFECT ON SOCIETY,

26 CERTAINLY, CORRECT?

27 A. NOT IN A DIRECT WAY.

28 Q. UH-HUH. AND BECAUSE, IN 1984, THE SURGEON

2015

1 GENERAL CONCLUDED IT DIDN'T MEET THIS DEFINITION, THIS WAS
2 THE DEFINITION THAT WAS THEN GENERALLY PREVALENT IN TERMS OF
3 DRUGS?

4 A. YES.

5 Q. THE SURGEON GENERAL CONCLUDED AND LABELED
6 NICOTINE USAGE AN HABITUATION, RIGHT?

7 A. YES.

8 Q. NOW, YOU TALKED ABOUT ANOTHER DEFINITION, A

9 DEFINITION OF THE WORLD HEALTH ORGANIZATION. THAT WAS IN
10 1965, I THINK --
11 A. YES.
12 Q. -- AFTER THIS DEFINITION.
13 NOW, AS YOU TOLD US THIS MORNING, THAT
14 DEFINITION, BASICALLY, DID AWAY WITH THE WORD "ADDICTION,"
15 RIGHT?
16 DID AWAY WITH --
17 A. YES. IT USED DRUG DEPENDENCE.
18 Q. RIGHT. THEY SUBSTITUTED DRUG DEPENDENCE, BUT
19 AT THAT POINT, THEY DIDN'T INCLUDE NICOTINE AS A
20 DEPENDENT-PRODUCING DRUG, DID THEY?
21 A. THAT'S CORRECT.
22 Q. OKAY. NOW, THIS DEFINITION THAT THE SURGEON
23 GENERAL USED WAS EVENTUALLY CHANGED; ISN'T THAT RIGHT?
24 A. YES.
25 Q. BUT IT WASN'T CHANGED UNTIL 1988, WAS IT?
26 A. THAT'S CORRECT.
27 Q. EVEN IN 1988, NICOTINE DIDN'T SATISFY THIS
28 DEFINITION, DID IT?
2016
1 A. NO.
2 Q. IN 1988, THE SURGEON GENERAL, IN THE REPORT
3 THAT YOU WERE A SCIENTIFIC EDITOR OF, CAME DOWN WITH A
4 DIFFERENT DEFINITION; ISN'T THAT RIGHT?
5 A. YES.
6 Q. A DEFINITION THAT WAS EQUALLY APPLICABLE TO
7 DRUG DEPENDENCE OR ADDICTION?
8 A. YES.
9 Q. IS THAT ACCURATE?
10 A. YES.
11 Q. AND THIS IS THE NEW DEFINITION, ISN'T IT,
12 "CRITERIA FOR DRUG DEPENDENCE," AND THERE ARE THREE PRIMARY
13 CRITERIA?
14 A. YES.
15 Q. "HIGHLY CONTROLLED OR COMPULSIVE USE," RIGHT?
16 A. YES.
17 Q. "PSYCHOACTIVE EFFECTS"?
18 A. YES.
19 Q. AND "DRUG-REINFORCED BEHAVIOR"?
20 A. YES.
21 Q. THERE'S NOTHING IN THOSE CRITERIA RELATED TO
22 INTOXICATION, IS THERE?
23 A. NO.
24 Q. THERE'S NOTHING IN THOSE CRITERIA HAVING TO DO
25 WITH SOCIALLY UNDESIRABLE RESULTS OR SOCIAL HARM?
26 A. THAT'S CORRECT.
27 Q. AND UNDER THE NEW DEFINITION, THE 1988
28 DEFINITION ADOPTED BY THE SURGEON GENERAL, NICOTINE
2017
1 QUALIFIES, RIGHT?
2 A. YES.
3 Q. BUT THE TOBACCO COMPANIES DIDN'T JUST SIGN OFF
4 ON THE NEW DEFINITION RIGHT AWAY, DID THEY?
5 A. THAT'S CORRECT.
6 Q. THEY STUCK WITH THE OLD ONE; ISN'T THAT RIGHT?
7 A. THAT'S WHAT WAS ARGUED, ALTHOUGH, THE
8 STATEMENTS TO THE PUBLIC, I THINK, ARE MISLEADING.
9 Q. WELL, LET'S -- YOU'VE TOLD US A BIT -- OR WE'VE
10 BEEN TOLD ABOUT THE TESTIMONY BEFORE CONGRESS, AND I'D LIKE
11 TO GO THERE FOR A SECOND, IF I COULD.
12 NOW, YOU ARE FAMILIAR WITH THAT TESTIMONY,
13 AREN'T YOU?

14 A. I AM.
15 Q. YOU'VE SEEN THE TAPE?
16 A. YES.
17 Q. YOU'VE READ THE TRANSCRIPTS?
18 A. YES.
19 Q. BUT YOU WEREN'T THERE?
20 A. CORRECT.
21 Q. SO YOU KNOW THAT CONGRESSMAN WIDEN, IN THE CLIP
22 WHERE MR. CAMPBELL SAYS YES OR NO TO THE ANSWER WHETHER
23 NICOTINE IS ADDICTIVE, YOU KNOW THAT CONGRESSMAN WIDEN
24 INSISTED AT THAT POINT ON A YES-OR-NO ANSWER?
25 A. COULD BE. I'VE FORGOTTEN THAT FACT.
26 Q. DIDN'T HE JUST SAY (READING):
27
28 "YES OR NO, DO YOU BELIEVE
2018
1 NICOTINE IS NOT ADDICTIVE?"
2
3 A. I DON'T REMEMBER THE DETAILS OF THAT, BUT I
4 ACCEPT THAT.
5 Q. OKAY. DO YOU REMEMBER THAT MR. JOHNSON FROM
6 R.J. REYNOLDS SAID (READING):
7
8 "CIGARETTES AND NICOTINE
9 CLEARLY DO NOT MEET THE CLASSIC DEFINITION OF
10 ADDICTION, THERE IS NO INTOXICATION."
11
12 DO YOU REMEMBER HIM SAYING THAT?
13 A. I THINK SO.
14 Q. ALL RIGHT. AND THEN CONGRESSMAN WIDEN SAID TO
15 HIM -- HE REPRIMANDED HIM FOR NOT GIVING A YES-OR-NO ANSWER,
16 DIDN'T HE?
17 HE SAID (READING):
18
19 "WE'LL TAKE THAT AS A NO.
20 AGAIN, TIME IS SHORT. I THINK EACH OF YOU
21 BELIEVE THAT NICOTINE IS NOT ADDICTIVE. WE
22 WOULD JUST LIKE TO HAVE THIS FOR THE RECORD."
23
24 DO YOU REMEMBER HIM SAYING THAT?
25 A. NOT SPECIFICALLY, BUT I'M NOT QUESTIONING WHAT
26 YOU'RE SAYING.
27 Q. ALL RIGHT. AND NICOTINE MEANS DIFFERENT THINGS
28 TO DIFFERENT PEOPLE.
2019
1 DON'T YOU THINK IT WOULD BE FAIR TO KNOW WHAT
2 EACH OF THESE EXECUTIVES THOUGHT ABOUT IT?
3 A. I SUPPOSE.
4 Q. WILLIAM CAMPBELL, PRESIDENT OF PHILIP MORRIS,
5 PAGE 545 (READING):
6
7 "SMOKING IS NOT INTOXICATING.
8 NO ONE GETS DRUNK FROM CIGARETTES AND NO ONE
9 HAS SAID THAT SMOKERS DO NOT FUNCTION
10 NORMALLY. SMOKING DOES NOT IMPAIR JUDGMENT.
11 IN SHORT, NO ONE IS LIKELY TO BE ARRESTED FOR
12 DRIVING UNDER THE INFLUENCE OF CIGARETTES.
13 OUR CONSUMERS SMOKE FOR MANY REASONS.
14 SMOKERS ARE NOT DRUG ADDICTS" -- OR -- "DRUG
15 USERS OR DRUG ADDICTS, AND WE DO NOT
16 APPRECIATE OR ACCEPT THEM BEING CHARACTERIZED
17 AS SUCH BECAUSE, YES, MR. CHAIRMAN, I AM ONE
18 OF THE 50 MILLION SMOKERS IN THIS COUNTRY."

19

20 DO YOU RECALL HIM SAYING THAT?

21 A. I BELIEVE SO.

22 Q. NOW, DO YOU RECALL MR. JOHNSON SAYING

23 (READING):

24

25 "CIGARETTES ARE CLEARLY NOT IN
26 THE SAME CLASS AS ADDICTIVE MIND-ALTERING
27 SUBSTANCES LIKE HEROIN AND COCAINE"?

28 /

2020

1 A. I BELIEVE SO.

2 Q. NOW, IF YOU USE THE CRITERIA FOR ADDICTION THAT
3 WERE APPLIED IN THE 1964 SURGEON GENERAL'S REPORT, EVEN IN
4 1994, NICOTINE WOULDN'T BE CLASSIFIED AS ADDICTIVE, WOULD IT?

5 A. THAT'S CORRECT.

6 Q. AND THAT'S WHAT THE CEO'S WERE USING, RIGHT?

7 A. I DON'T THINK -- AGAIN, THE COMMUNICATION TO
8 THE PUBLIC IS MISLEADING, BECAUSE IT DOESN'T MENTION THAT
9 THIS IS A WORD ISSUE.

10 MR. CARLTON: YOUR HONOR, THIS IS NOT RESPONSIVE TO
11 THE QUESTION.

12 THE COURT: WELL --

13 MR. CARLTON: I ASKED ABOUT THE CEO'S.

14 THE COURT: FAIR ENOUGH. SUSTAINED.

15 Q. BY MR. CARLTON: NOW, THE COMPANY'S POSITION
16 STATED TO CONGRESS IN 1994 WASN'T WELL RECEIVED IN THE PRESS,
17 WAS IT?

18 A. THAT'S CORRECT.

19 Q. YOU'RE PRETTY FAMILIAR WITH PRESS COVERAGE OF
20 THAT PARTICULAR INCIDENT?

21 A. SOME OF IT.

22 Q. AND WOULDN'T IT BE FAIR TO SAY THAT THE
23 COMMENTS OF THE CEO'S WERE PRETTY UNIFORMLY REJECTED IN THE
24 PRESS?

25 A. YES.

26 Q. BUT NOWHERE DURING THAT 1994 TESTIMONY DID ANY
27 OF THOSE GENTLEMEN SAY THAT QUITTING CIGARETTES WOULD BE
28 EASY, DID THEY?

2021

1 A. I DON'T RECALL EITHER WAY.

2 Q. NONE OF THEM DENIED THAT QUITTING CIGARETTES
3 COULD BE HARD TO DO?

4 A. I DON'T KNOW.

5 Q. THE AD THAT RAN IN THE PAPER THAT MR. PIUZE
6 SHOWED TO EVERYBODY, THERE WAS NOTHING IN THAT AD DENYING
7 THAT QUITTING CIGARETTES COULD BE A DIFFICULT THING TO DO,
8 WAS THERE?

9 A. WELL, THE PROBLEM IS THE OMISSION OF NOT
10 STATING THAT. WHAT IT BASICALLY SAYS IS, IS THAT IT'S NOT
11 ADDICTING. 40 MILLION PEOPLE HAVE QUIT WITHOUT HELP, WHICH
12 SUGGESTS THAT YOU DECIDE TO QUIT, AND YOU CAN QUIT.

13 IF THE ONLY DIFFERENCE BETWEEN ADDICTION AND
14 THE COMPULSIVE USE OF ANY OTHER DRUG IS INTOXICATION, THEN I
15 THINK IT'S MISLEADING TO SAY THAT THIS DRUG IS NOT ADDICTING,
16 YOU CAN JUST QUIT WHEN YOU WANT TO, BECAUSE IT MISSES THE
17 COMPULSIVE USE PART OF IT AND THE FACT THAT IT'S DIFFICULT.
18 THE AD NEVER SAID THAT SMOKING IS AS DIFFICULT TO QUIT AS
19 OTHER DRUGS OF ABUSE.

20 I, FRANKLY, THINK WHEN THE PUBLIC READS THAT,
21 THEY THINK THAT THIS IS NOT CONSISTENT WITH A DRUG
22 DEPENDENCY. IT'S JUST CONSISTENT WITH, MAKE UP YOUR MIND TO
23 QUIT AND QUITTING, AND THAT'S JUST NOT THE TRUTH.

24 Q. LET'S CHANGE THE SUBJECT JUST BRIEFLY, BECAUSE
25 WE'LL GET BACK TO THIS.

26 NICOTINE. NICOTINE HAS A HALF LIFE IN THE
27 BODY, DOESN'T IT?

28 A. YES.

2022

1 Q. AND THAT MEANS IN A CERTAIN PERIOD OF TIME,
2 HALF OF THAT NICOTINE WILL BE GONE?

3 A. YES.

4 Q. WHAT'S THE HALF-LIFE OF NICOTINE?

5 A. WELL, FOR MOST OF THE TIME COURSE, IT'S ABOUT
6 TWO HOURS. THERE IS WHAT'S CALLED A SHALLOW TERMINAL
7 HALF-LIFE THAT'S PROBABLY 20 HOURS. SO IT'S COMPLICATED TO
8 EXPLAIN, BUT THERE ARE TWO DIFFERENT HALF-LIVES; ONE IS TWO
9 HOURS, ONE IS 20.

10 Q. ALL OF THE NICOTINE WILL BE OUT OF A PERSON'S
11 BODY IN FIVE TO SIX DAYS, RIGHT?

12 A. YES.

13 Q. MAYBE LESS?

14 A. YES.

15 Q. ISN'T THAT CORRECT?

16 A. YES.

17 Q. NOW, THE PHARMACOLOGICAL SYMPTOMS -- OR
18 EFFECTS -- I'M SORRY -- OF NICOTINE HAVE BEEN KNOWN FOR A
19 LONG, LONG TIME; ISN'T THAT RIGHT?

20 A. YES.

21 Q. AS A MATTER OF FACT, NICOTINE HAS BEEN
22 STUDIED -- THE PHARMACOLOGICAL EFFECTS OF NICOTINE HAVE BEEN
23 STUDIED SINCE THE 19TH CENTURY; ISN'T THAT RIGHT?

24 A. YES. NOT IN PEOPLE, BUT THEY HAVE BEEN
25 STUDIED.

26 Q. AND THE FACT THAT NICOTINE IS A NATURAL
27 COMPONENT OF TOBACCO, THAT'S NO SECRET?

28 A. CORRECT.

2023

1 Q. THE FACT THAT IT HAS PHARMACOLOGIC EFFECTS WAS
2 KNOWN BACK IN THE 1800'S, AND THERE'S BEEN -- ISN'T THAT
3 RIGHT?

4 A. PROBABLY LATE 1800'S, YES.

5 Q. AND THERE'S BEEN AN UNDERSTANDING FOR A LONG,
6 LONG TIME THAT SMOKING CAN BE DIFFICULT TO QUIT?

7 A. YES.

8 Q. AGAIN, THAT UNDERSTANDING GOES BACK TO THE
9 1800'S?

10 A. YES.

11 Q. AND THE PHARMACOLOGICAL EFFECTS OF NICOTINE
12 WERE SPECIFICALLY ACKNOWLEDGED BY THE SURGEON GENERAL IN HIS
13 1964 REPORT, WEREN'T THEY?

14 A. YES.

15 Q. IT WAS KNOWN BACK THEN THAT -- EVEN BACK THEN
16 THAT SMOKERS HAVE STRONG URGES TO SMOKE?

17 A. YES.

18 Q. AND IT WAS KNOWN THAT SMOKING BEHAVIOR WAS
19 REINFORCED BY THE PHARMACOLOGICAL ACTION OF NICOTINE; ISN'T
20 THAT RIGHT?

21 A. YES.

22 Q. BACK IN 1964, THE SURGEON GENERAL KNEW THAT
23 SMOKERS WHO QUIT MIGHT EXPERIENCE SYMPTOMS LIKE RESTLESSNESS
24 OR INSOMNIA?

25 A. YES.

26 Q. ANXIETY, RIGHT?

27 A. YES.

28 Q. IMPAIRED CONCENTRATION?

2024

1 A. YES.

2 Q. IMPAIRED JUDGMENT?

3 A. YES.

4 Q. DIMINISHED PULSE?

5 A. YES.

6 Q. AND IT WAS KNOWN IN 1964 THAT NICOTINE HAD

7 PSYCHOACTIVE EFFECTS?

8 A. CORRECT.

9 Q. SO THAT WASN'T A SECRET -- IT WASN'T A SECRET

10 HELD BY THE TOBACCO INDUSTRY IN 1964 THAT NICOTINE HAD SOME

11 SORT OF PSYCHOACTIVE EFFECT?

12 A. THAT'S CORRECT.

13 Q. AND IT WASN'T A SECRET THAT -- LET ME STRIKE

14 THAT.

15 IT WASN'T A SECRET IN 1964 THAT NICOTINE

16 PROVIDED POSITIVE REINFORCEMENT FOR CIGARETTE SMOKING?

17 A. THAT'S CORRECT.

18 Q. AND WITH ALL OF THAT KNOWLEDGE, WITH ALL OF

19 THAT KNOWLEDGE ABOUT THE PSYCHOACTIVE EFFECT OF NICOTINE, THE

20 PHARMACOLOGICAL EFFECT OF NICOTINE, NEVERTHELESS, THE SURGEON

21 GENERAL CONCLUDED THAT IT WAS A HABITUATION FOR THE REASONS

22 THAT WE DISCUSSED?

23 A. YES.

24 Q. THE SYMPTOMS OF NICOTINE ADDICTION DON'T LAST

25 FOREVER, DO THEY?

26 A. NO. DIFFERENT SYMPTOMS LAST DIFFERENT PERIODS

27 OF TIME, THOUGH. SOME ARE BRIEF AND SOME ARE LONGER.

28 Q. RIGHT. WELL, LET'S TALK ABOUT SOME OF THOSE

2025

1 SYMPTOMS.

2 THE ACUTE SYMPTOMS THAT A SMOKER FEELS WHEN

3 THEY FIRST STOP SMOKING, CAN YOU DESCRIBE A FEW OF THOSE?

4 A. IRRITABILITY, ANXIETY, INSOMNIA, TROUBLE

5 CONCENTRATING. THOSE ARE SOME OF THE MAIN ONES.

6 NERVOUSNESS.

7 Q. AND THOSE -- THOSE PEAK IN A FEW DAYS, DON'T

8 THEY?

9 A. YES.

10 Q. HOW MANY DAYS?

11 A. WELL, IT DEPENDS FROM STUDY TO STUDY. BUT

12 SOMETIME BETWEEN THREE OR FOUR DAYS AND A WEEK.

13 Q. AND THEY'RE RESOLVED WITHIN A WEEK, GENERALLY?

14 A. WITHIN A COUPLE WEEKS, THOSE SYMPTOMS TEND TO

15 GET BETTER. ALTHOUGH, THERE ARE OTHER SYMPTOMS THAT

16 PERSISTED MUCH LONGER.

17 Q. AND THE OTHER SYMPTOMS THAT YOU REFERRED TO

18 WERE SOMETHING CALLED DYSPHORIA?

19 A. YES.

20 Q. AND DYSPHORIA IS, ESSENTIALLY, WHAT, BEING IN A

21 BAD MOOD?

22 A. SORT OF. IT'S BEING MILDLY DEPRESSED. IT'S

23 NOT ENJOYING THINGS IN YOUR LIFE. IT'S NOT FEELING QUITE

24 RIGHT. NOT HAVING MUCH ENERGY AND DRIVE. FEELING OF

25 SOMETHING MISSING. IT'S AN OFF MOOD, BUT FROM SMOKING. IT

26 INCLUDES THESE OTHER FEATURES OFTEN, AND IT'S NOT JUST FOR

27 SMOKING. MANY DRUG ADDICTIONS HAVE THIS PERSISTENT DYSPHORIA

28 THAT CAN LAST FOR MONTHS AFTERWARDS.

2026

1 Q. BUT THE ACUTE SYMPTOMS WILL BE GONE, GENERALLY,

2 WITHIN A WEEK?

3 A. YES. THERE ARE ALSO ISSUES IN LONG-TERM WHICH

4 ARE PROBLEMS THAT GET TRIGGERED.

5 FOR EXAMPLE, IF YOU'RE A PERSON WHO SMOKES WHEN
6 YOU'RE STRESSED, EVEN MONTHS LATER WHEN YOU QUIT SMOKING, IF
7 YOU'RE STRESSED AGAIN, THE FIRST THING THAT COMES TO YOUR
8 MIND IS, IF I HAD A CIGARETTE, I'D FEEL BETTER. OR IF I FEEL
9 DEPRESSED, THE FIRST THING THAT COMES TO MIND IS, IF I HAD A
10 CIGARETTE, I WOULD FEEL BETTER, I WOULD DO BETTER. IF YOU
11 HAVE TROUBLE DOING YOUR JOB. THE THINGS THAT SMOKERS
12 NORMALLY DID WITH THEIR CIGARETTES SERVE AS TRIGGERS TO URGES
13 TO SMOKE FOR A LONG TIME. FOR MONTHS.

14 Q. AND THAT WOULD BE TRUE, WOULDN'T IT, OF ANY
15 ACTION THAT YOU DO HABITUALLY?

16 ANYTHING THAT WAS ASSOCIATED WITH IT WOULD
17 REMIND YOU OF THAT ACTION, THAT HABIT?

18 A. BUT IN THIS CASE, YOU'RE BEING REMINDED OF A
19 CHEMICAL EFFECT, OF AN EFFECT OF NICOTINE THAT HELPS YOU DEAL
20 WITH DEPRESSED -- OR DEPRESSION OR CONCENTRATION. IT IS
21 TRUE, IT IS CONDITIONED, IT IS LEARNED, BUT IT'S BASED ON A
22 PRIOR CHEMICAL EXPOSURE. SO IF SOMEONE DIDN'T HAVE THAT
23 CHEMICAL EXPOSURE, IT WOULDN'T BE RETRIGGERED.

24 Q. WELL, ANYTHING SOMEONE DOES REPEATEDLY
25 THROUGHOUT THE DAY FOR A PERIOD -- A LONG PERIOD OF TIME IS
26 GOING TO BE ASSOCIATED WITH VARIOUS THINGS THAT THEY DO
27 THROUGHOUT THE DAY, ISN'T IT?

28 A. YES.

2027

1 Q. AND IF YOU STOP DOING THE REPEATED OR HABITUAL
2 ACTION, AND YOU LATER ON ENCOUNTER ONE OF THE THINGS THAT
3 YOU -- THAT WOULD OCCUR DURING THE DAY WHEN YOU WERE DOING
4 IT, IT WOULD REMIND YOU OF THIS HABITUAL CONDUCT THAT YOU'VE
5 GIVEN UP; ISN'T THAT TRUE?

6 A. YES.

7 Q. AND IT DOESN'T TAKE SOME KIND OF CHEMICAL
8 BINDING IN THE BRAIN FOR THAT TO HAPPEN, DOES IT?

9 A. NO. BUT HERE, WE'RE DEALING WITH A SITUATION
10 WHERE THIS DRUG, WHICH A PERSON NEVER NEEDS TO EVER HAVE TO
11 LIVE OR FUNCTION OR SURVIVE, THEIR BRAIN HAS BECOME
12 ACCUSTOMED TO IT FROM EXPOSURE OVER TIME. AND THE BRAIN HAS
13 BECOME DEPENDENT ON IT, AND IT'S LINKED TO CERTAIN THINGS
14 LIKE STRESS REDUCTION OR DEALING WITH DEPRESSION OR
15 CONCENTRATING ON YOUR JOB.

16 SO WHAT PEOPLE ARE LINKING IS THIS CHEMICAL
17 EXPOSURE THAT THEY NEVER NEEDED TO HAVE. IT'S NOT JUST SOME
18 ACTIVITY THEY PICKED AT RANDOM. THIS IS A DRUG EXPOSURE. SO
19 IT'S RELATED TO THE DRUG EFFECTS. IT'S NOT JUST SOME
20 ACTIVITY THAT HAPPENED TO BE PAIRED WITH SOME OTHER ACTIVITY.

21 Q. LET'S TALK ABOUT BRAIN RECEPTORS. REMEMBER
22 THOSE?

23 A. YES.

24 Q. NOW, ACTING ON A RECEPTOR IN THE BRAIN ISN'T
25 SOMETHING THAT'S UNIQUE TO NICOTINE, IS IT?

26 A. NO.

27 Q. AS A MATTER OF FACT, THERE ARE MANY THINGS THAT
28 AFFECT BRAIN RECEPTORS?

2028

1 A. YES.

2 Q. RIGHT?

3 ALMOST ALL THERAPEUTIC DRUGS AFFECT RECEPTORS;
4 ISN'T THAT RIGHT?

5 A. YES.

6 Q. VIRTUALLY EVERYTHING THAT YOU TAKE INTO YOUR
7 BODY THAT YOU INGEST OR YOU INHALE ELICIT PSYCHOLOGICAL
8 EFFECTS BY INTERACTING WITH BRAIN RECEPTORS?

9 A. WELL, YEAH. THINGS THAT DO HAVE PSYCHOLOGICAL

10 EFFECTS OFTEN DO IT VIA RECEPTOR ACTION.
11 Q. OKAY. HOW ABOUT CAFFEINE?
12 A. YES.
13 Q. MILK?
14 A. YES.
15 Q. CHOCOLATE?
16 A. YES.
17 Q. SO THIS PROPERTY OF BEING PSYCHOACTIVE AND
18 INTERACTING WITH BRAIN RECEPTORS IS NOT UNIQUE TO NICOTINE?
19 A. NO. WHAT IS UNIQUE TO NICOTINE IS THE TYPE OF
20 RECEPTORS THAT COULD ACTIVATE IT AND THE VARIETY OF RECEPTORS
21 AND THE SORTS OF THINGS THAT NICOTINE DOES THROUGH THOSE
22 RECEPTORS. I DON'T KNOW OF ANY OTHER DRUG THAT HAS THE SAME
23 SPECTRUM OF ACTIONS AS NICOTINE.
24 Q. ALL OF OUR MOODS, ALL OF OUR MENTAL STATES, ARE
25 AFFECTED BY ACTIVITY IN BRAIN RECEPTORS; ISN'T THAT RIGHT?
26 A. YES.
27 Q. NOT ONLY DRUGS AND OTHER SUBSTANCES AFFECT
28 BRAIN RECEPTORS?
2029
1 A. YES.
2 Q. THE CONDUCT, THINGS YOU DO IN YOUR DAILY LIFE
3 THAT AFFECT YOUR MOOD WILL AFFECT BRAIN RECEPTORS?
4 A. WELL, THOSE ARE THE THINGS THAT THE RECEPTORS
5 ARE MEANT TO DO, SAY, FROM ACH. ACH IS RELEASED IN RESPONSE
6 TO BODY ACTIVITIES, AND IT WORKS IN THOSE RECEPTORS. THAT'S
7 WHAT IT'S SUPPOSED TO DO.
8 Q. OKAY. IT'S A NATURAL PROCESS?
9 A. YES.
10 Q. NOW, WHEN ONE QUILTS SMOKING -- YOU'VE SAID
11 EARLIER THAT SMOKING GENERATES ADDITIONAL RECEPTORS; ISN'T
12 THAT RIGHT?
13 A. YES.
14 Q. WHEN ONE QUILTS SMOKING, THOSE DISAPPEAR OVER
15 TIME, DON'T THEY?
16 A. WELL, PROBABLY. WE DON'T KNOW IN PEOPLE. THE
17 STUDIES HAVE NOT BEEN DONE. IT HAS BEEN DONE IN ANIMALS, AND
18 ANIMALS' BRAINS DO GO BACK TO NORMAL. HUMAN BRAINS
19 EVENTUALLY GO BACK TO NORMAL BECAUSE FORMER SMOKERS SEEM TO
20 HAVE SIMILAR RECEPTORS, BUT WE DON'T KNOW HOW LONG IT TAKES.
21 Q. I WANT TO TALK ABOUT QUILT ATTEMPTS.
22 YOU HAVE A DEFINITION FOR A SERIOUS QUILT
23 ATTEMPT; ISN'T THAT RIGHT?
24 A. YES.
25 Q. AND THAT IS THAT SOMEBODY HAS TO QUILT SMOKING
26 FOR AT LEAST 24 HOURS; IS THAT RIGHT?
27 A. YES.
28 Q. NOW, IN YOUR MIND, SOMEONE WHO DOESN'T QUILT
2030
1 SMOKING AT ALL FOR ANY PERIOD OF TIME HASN'T MADE A SERIOUS
2 QUILT ATTEMPT?
3 A. THAT'S CORRECT.
4 Q. AND SOMEONE WHO DOESN'T EVEN CUT DOWN ON THEIR
5 SMOKING AT ALL FOR ANY PERIOD OF TIME HASN'T MADE A SERIOUS
6 QUILT ATTEMPT, HAVE THEY?
7 A. THAT'S CORRECT.
8 Q. NOW, TO BE A SERIOUS QUILT ATTEMPT, WOULD IT BE
9 HELPFUL TO KNOW WHAT KIND OF THINGS A PERSON DOES TO GET
10 THEMSELVES OVER THE HUMP?
11 WHAT KINDS OF HELP THEY MIGHT GET FOR
12 THEMSELVES?
13 A. I'M NOT SURE -- WHAT IS YOUR QUESTION?
14 Q. OKAY. HERE'S THE QUESTION. IT WOULD BE

15 IMPORTANT TO KNOW IN JUDGING WHETHER A QUIT ATTEMPT WAS
16 SERIOUS WHETHER SOMEONE GOT SOME SORT OF COUNSELING, WOULDN'T
17 IT?

18 A. WELL, IT HELPS YOU UNDERSTAND MORE ABOUT THE
19 NATURE OF THE QUIT ATTEMPTS. I'M NOT SURE IF -- WHAT YOUR
20 QUESTION IS. ARE YOU TRYING TO RATE SERIOUSNESS?
21 IS THAT WHAT THE QUESTION IS SUGGESTING?

22 Q. WELL, IF SOMEONE -- LET ME ASK YOU THIS. IF
23 SOMEONE DIDN'T CUT DOWN ON THEIR SMOKING, THEY DIDN'T QUIT
24 THEIR SMOKING, AND THEY DIDN'T SEEK ANY COUNSELING OR HELP IN
25 QUITTING, WOULD THAT BE A SERIOUS QUIT ATTEMPT?

26 A. BUT THEY STILL QUIT FOR SOME PERIOD OF TIME?

27 Q. NO. DIDN'T QUIT AT ALL.

28 A. WELL, IF THEY DIDN'T TRY TO QUIT, THEN IT

2031

1 WOULDN'T BE A SERIOUS QUIT ATTEMPT. BUT IF THEY DID TRY TO
2 QUIT, SAY, ON THEIR OWN, THAT COULD BE QUITE SERIOUS. IT
3 DEPENDS. DIFFERENT PEOPLE HAVE DIFFERENT WAYS OF TRYING TO
4 QUIT. SOME PEOPLE SEEK COUNSELING. SOME PEOPLE PREFER TO DO
5 IT ON THEIR OWN. SOME PEOPLE ASK FOR HELP FROM THEIR FRIENDS
6 AND FAMILY. SOME PEOPLE ARE ASHAMED BECAUSE THEY MIGHT BE
7 THOUGHT TO HAVE WEAK WILL AND WANT TO DO IT ON THEIR OWN
8 WITHOUT TELLING ANYBODY. SO THERE ARE A LOT OF INDIVIDUAL
9 VARIATION ON HOW A PERSON WILL TRY TO QUIT.

10 Q. I WANT TO REVISIT THE ISSUE OF THIS
11 ASSOCIATIONAL STRESS THAT YOU WERE TALKING ABOUT.
12 ONE MIGHT BE REMINDED OF SMOKING BY SOMETHING
13 THAT OCCURS DURING THE DAY, RIGHT?

14 A. YES.

15 Q. NOW, WOULDN'T IT BE AN APPROPRIATE EFFORT,
16 RECOGNIZING THAT AHEAD OF TIME, TO CHANGE ONE'S LIFESTYLE A
17 BIT TO MINIMIZE THOSE KINDS OF CIRCUMSTANCES?

18 A. YES.

19 Q. IN OTHER WORDS, YOU MIGHT TAKE THE ASHTRAYS OUT
20 OF YOUR HOUSE, RIGHT?

21 A. YES.

22 Q. YOU MIGHT THROW THE CIGARETTES AWAY SO THEY'RE
23 NOT AROUND THE HOUSE?

24 A. YES.

25 Q. IF YOU LIKE TO SMOKE WHEN YOU HAD A DRINK, YOU
26 MIGHT STOP DRINKING?

27 A. YES.

28 Q. OR IF YOU DID OTHER THINGS THAT YOU ASSOCIATED
2032

1 WITH SMOKING, YOU MIGHT STOP DOING THOSE THINGS OR CUT THEM
2 BACK OR CHANGE THEM IN SOME WAY, RIGHT?

3 A. YES. YES.

4 Q. AND IF YOU DID THOSE KINDS OF -- IF YOU MADE
5 THOSE KIND OF CHANGES IN YOUR LIFESTYLE, WOULDN'T THAT BE
6 SOME SORT OF A GAUGE ABOUT HOW SERIOUS YOUR QUIT ATTEMPT WAS?

7 A. I DON'T KNOW ABOUT THE GAUGE OF HOW SERIOUS. I
8 THINK IT WOULD IMPROVE THE CHANCES OF QUITTING.

9 Q. OKAY.

10 A. BUT IT'S HARD FOR ME TO MAKE THAT JUDGMENT
11 ABOUT HOW SERIOUS A QUIT ATTEMPT IS. IF SOMEONE SAYS THAT
12 THEY WANT TO QUIT AND THEY DO STOP SMOKING FOR SOME PERIOD OF
13 TIME, I COUNT THAT AS A SERIOUS QUIT ATTEMPT.

14 Q. I WANT TO TALK A BIT ABOUT COMPENSATION, OKAY.

15 NOW, YOU HAVE -- YOU'VE PUBLISHED AN ARTICLE ON
16 COMPENSATION ENTITLED, "REDUCING THE ADDICTIVENESS OF
17 CIGARETTES," HAVEN'T YOU?

18 A. YES.

19 Q. THAT WAS IN "TOBACCO CONTROL" MAGAZINE --

20 "TOBACCO CONTROL" IN 1998?
21 A. THAT WAS NOT AN ARTICLE ON COMPENSATION. IT
22 MENTIONED COMPENSATION. IT WAS ACTUALLY ON A PROPOSAL FOR
23 LESS-ADDICTIVE CIGARETTES.
24 Q. BUT YOU ADDRESSED COMPENSATION IN THAT ARTICLE;
25 ISN'T THAT RIGHT?
26 A. YES.
27 Q. AND IN THAT ARTICLE, YOU CONCLUDED THAT
28 ALTHOUGH COMPENSATION IS A CONCERN, THE EXTENT OF
2033
1 COMPENSATION ISN'T GREAT BASED UPON THE AVAILABLE DATA?
2 DIDN'T YOU SAY THAT?
3 A. YES. BUT THE CIGARETTES WE WERE TALKING ABOUT
4 IN THAT PAPER ARE DIFFERENT THAN COMMERCIAL CIGARETTES WHICH
5 PEOPLE DO COMPENSATE.
6 FOR COMMERCIAL CIGARETTES, THE TOBACCO HAS GOT
7 PLENTY OF NICOTINE, AND IT'S EASY TO COMPENSATE. FOR THE
8 CIGARETTES WE WERE TALKING ABOUT, WE WERE TALKING ABOUT
9 CIGARETTES THAT ARE NOT CURRENTLY MANUFACTURED. THEY WOULD
10 BE ONES THAT ARE REALLY LOW IN NICOTINE CONTENT SO THAT
11 PEOPLE COULD NOT COMPENSATE FOR THEM. AND OUR THOUGHT WAS
12 THAT PEOPLE WILL NOT JUST PUFF AND PUFF AND PUFF AND PUFF AND
13 GET EXTRA TAR AND WHATNOT. THEY WOULD EVENTUALLY REDUCE
14 THEIR NICOTINE INTAKE, AND THAT'S WHAT THIS WAS ADDRESSING,
15 THAT PROPOSAL.
16 Q. NOW, IN THIS ARTICLE, DOCTOR, DIDN'T YOU SAY
17 (READING):
18
19 "MOST EXPERIMENTAL STUDIES ON
20 SWITCHING FROM HIGH-YIELD TO LOW-YIELD
21 CIGARETTES WERE SHORT-TERM, LASTING DAYS TO A
22 WEEK"?
23
24 A. YES.
25 Q. (READING:)
26
27 "THE ONLY STUDY THAT EXAMINED
28 SWITCHING OVER 12 WEEKS REPORTED A 30 PERCENT
2034
1 REDUCTION IN LEVELS OF NICOTINE AND COTININE
2 (A NICOTINE METABOLITE) WITH NO INCREASE IN
3 CIGARETTE CONSUMPTION OR CARBON MONOXIDE
4 LEVELS, SUGGESTING THAT, WHEREAS PARTIAL
5 COMPENSATION OCCURRED, THERE WAS NO HARMFUL
6 OVERSMOKING OF THE LOW-YIELD CIGARETTES."
7
8 RIGHT?
9 A. RIGHT. THERE WAS STILL ABOUT 80 PERCENT
10 COMPENSATION. IT WAS NOT 100 PERCENT, BUT THERE WAS STILL
11 SIGNIFICANT COMPENSATION WITH THAT STUDY.
12 Q. AND WHAT YOU WERE ADDRESSING HERE WASN'T A
13 SITUATION WHERE PEOPLE WERE CUTTING DOWN FROM 30 CIGARETTES
14 TO 15 OR 5; YOU'RE ADDRESSING PEOPLE WHO SWITCH FROM
15 HIGH-YIELD CIGARETTES TO LOW-YIELD CIGARETTES, RIGHT?
16 A. YES.
17 Q. AND YOU WROTE (READING):
18
19 "THUS, EVEN THOUGH
20 COMPENSATORY OVERSMOKING IS A CONCERN, THE
21 EXTENT MAY NOT PROVE TO BE GREAT" . . .
22
23 A. YES.
24 Q. ISN'T THAT RIGHT?

25 A. YES.

26 Q. AND DOCTOR, YOU WROTE THAT THE COMPENSATING
27 THAT SMOKERS DO WHEN THEY SWITCH TO LOW-NICOTINE CIGARETTES
28 TO HIGHER-YIELD CIGARETTES APPEARS TO LAST FOR ONLY A FEW
2035

1 DAYS OR WEEKS, AT MOST; ISN'T IT TRUE, YOU'VE WRITTEN THAT?

2 A. WELL, IT'S A LITTLE MISLEADING IN THAT IT
3 DOESN'T STATE -- OR IT DOESN'T INTEND TO MEAN THAT THERE'S NO
4 COMPENSATION. BUT I THINK COMPLETE COMPENSATION VERSUS
5 PARTIAL COMPENSATION IS A MORE ACCURATE STATEMENT.

6 Q. I'D LIKE TO SHOW YOU EXHIBIT 5193.

7

8 (I.D. 593 - MEDICAL ARTICLE)

9

10 Q. BY MR. CARLTON: THIS IS AN ARTICLE YOU WROTE
11 ESTABLISHING A NICOTINE THRESHOLD FOR ADDICTION?

12 A. YES. THIS IS THE IDEA THAT I JUST DISCUSSED
13 WITH RESPECT TO THE FIRST ARTICLE YOU TALKED ABOUT.

14 Q. AND DIDN'T YOU WRITE HERE (READING):

15

16 "OVERCOMPENSATION (I.E.,
17 INHALING MORE SMOKE FROM LOW-NICOTINE
18 CIGARETTES THAN FROM HIGHER-YIELD BRANDS)
19 APPEARS, HOWEVER, TO PERSIST ONLY FOR DAYS OR
20 WEEKS. IN LONG-TERM STUDIES OF CARBON
21 MONOXIDE EXPOSURE AFTER SUBJECTS SWITCHED TO
22 LOW-YIELD CIGARETTES, COMPENSATORY
23 OVERSMOKING APPEARS NOT TO PERSIST."

24

25 A. YES. THAT'S WHAT IT SAYS.

26 Q. YOU ALSO WROTE (READING):

27

28 "IT SHOULD BE NOTED THAT OTHER
2036

1 RESEARCHERS HAVE PROPOSED THE INTRODUCTION OF
2 'SAFER' CIGARETTES THAT ARE ENRICHED WITH
3 NICOTINE IN ORDER TO REDUCE THE RATIO OF TAR
4 TO NICOTINE."

5

6 ISN'T THAT A SUGGESTION YOU MADE?

7 A. YES.

8 Q. AND (READING):

9

10 "A STRATEGY INVOLVING
11 NICOTINE-ENRICHED CIGARETTES MIGHT REDUCE
12 MORBIDITY AND MORTALITY FROM CIGARETTE
13 SMOKING" . . .

14

15 RIGHT?

16 A. YES.

17 HOWEVER, THE SECOND ARTICLE GOES ON TO SAY THAT
18 THE PROBLEM WITH DOING THAT IS IT SUSTAINS ADDICTION, AND
19 THEN ANOTHER APPROACH IS LOW-NICOTINE CIGARETTES SUPPLEMENTED
20 BY NICOTINE MEDICATIONS, WHICH WOULD DO THE SAME THING, WOULD
21 GIVE PEOPLE ANOTHER SOURCE OF NICOTINE SO THAT THEY'D SMOKE
22 LESS AND BECOME LESS DEPENDENT ON THE TOBACCO FOR THEIR
23 NICOTINE.

24 Q. FOR SMOKERS OF ULTRALIGHT CIGARETTES, IT'S HARD
25 TO SMOKE THE CIGARETTE IN A WAY THAT ALLOWS FOR COMPLETE
26 COMPENSATION, ISN'T IT?

27 A. CORRECT. BUT LET ME JUST MAKE SURE THAT
28 EVERYONE UNDERSTANDS ULTRALIGHT.

2037

1 ULTRALIGHT DOES NOT INCLUDE MARLBORO
2 ULTRALIGHTS. THIS WAS DEFINED AS 0.1 MILLIGRAM NICOTINE AND
3 1 MILLIGRAM TAR IN OUR STUDY, WHICH THERE ARE ONLY A FEW
4 BRANDS THAT ARE THAT LOW. MOST ONES THAT ARE LABELED AS
5 ULTRALIGHT HAVE MUCH HIGHER YIELDS THAN WHAT WE CALLED
6 ULTRALIGHTS.
7 SO IF YOU FOCUS ON THE THINGS WE WERE LOOKING
8 AT, THINGS LIKE CAMBRIDGE AND CARLTON, THE BOTTOM OF THE LINE
9 FOR THOSE, IT'S DIFFICULT TO COMPENSATE. FOR MOST OF THE
10 CIGARETTES THAT ARE MARKETED AS ULTRALIGHT THAT HAVE YIELDS
11 OF .2 OR .3 OR HIGHER FOR NICOTINE, YOU CAN COMPENSATE VERY
12 EASILY.
13 Q. BUT YOU HAVE NO INFORMATION, DO YOU, ABOUT
14 WHETHER MR. BOEKEN COMPENSATED?
15 A. NOT SPECIFICALLY, I DON'T.
16 Q. SO YOU DON'T KNOW WHETHER HE TOOK MORE PUFFS,
17 RIGHT?
18 A. THAT'S CORRECT.
19 Q. BIGGER PUFFS?
20 A. THAT'S CORRECT.
21 Q. YOU JUST DON'T HAVE ANY INFORMATION AT ALL
22 ABOUT WHETHER HE COMPENSATED WHEN HE MOVED UP THE LINE?
23 A. THAT'S CORRECT.
24 Q. I WANT TO TALK A FEW MINUTES, ALSO, ABOUT HOW
25 TAR AND NICOTINE ARE MEASURED IN THESE CIGARETTES.
26 NOW, YOU KNOW, I'M SURE, THAT THE MACHINE THAT
27 MEASURES TAR AND NICOTINE IN THESE CIGARETTES IS A MACHINE
28 THAT WAS MANDATED BY THE FEDERAL TRADE COMMISSION, RIGHT?
2038
1 A. YES.
2 Q. AND THE FTC METHOD WAS NEVER INTENDED TO
3 REPRODUCE OR TO EXACTLY DUPLICATE THE WAY THAT AN INDIVIDUAL
4 SMOKER MIGHT SMOKE A CIGARETTE, ISN'T THAT TRUE?
5 A. WELL, IT WAS SUPPOSED TO DO WHAT THE AVERAGE
6 SMOKER DID.
7 Q. AND THE PURPOSE OF HAVING A MACHINE DO IT IS SO
8 THAT THEY COULD HAVE A STANDARD TO COMPARE CIGARETTES, A
9 STANDARD THAT WAS CONSISTENT FROM CIGARETTE TO CIGARETTE,
10 RIGHT?
11 A. YES.
12 Q. IT WAS STRICTLY FOR PURPOSES OF COMPARISON?
13 A. YES.
14 Q. ALL RIGHT. AND FROM THE BEGINNING, THE FTC
15 KNEW THAT CIGARETTE SMOKE -- THE CIGARETTE SMOKING MACHINE
16 WOULDN'T MIMIC THE WAY THAT INDIVIDUAL SMOKERS SMOKED THE
17 CIGARETTE?
18 A. WELL, THAT'S TRUE, BUT I THINK THE INITIAL
19 EXPECTATION WAS THAT THE MACHINE WOULD REFLECT ON AVERAGE
20 WHAT PEOPLE TOOK IN FROM DIFFERENT KINDS OF CIGARETTES, WHICH
21 IT TURNED OUT NOT TO DO.
22 Q. AND THE FTC'S BEEN INFORMED OF THAT, HAVEN'T
23 THEY?
24 A. YES.
25 Q. AND THEY HAVEN'T CHANGED THE MACHINE?
26 A. WELL, THERE WAS A PROPOSAL FROM FTC TO CHANGE
27 THE MACHINE THAT SOME PEOPLE IN THE PUBLIC HEALTH COMMUNITY,
28 LIKE MYSELF, ARGUED SHOULDN'T BE DONE UNTIL -- WELL, LET ME
2039
1 STEP BACK.
2 THIS WAS AT THE TIME WHEN THE FOOD AND DRUG
3 ADMINISTRATION WAS TRYING TO REGULATE NICOTINE AND TOBACCO.
4 AND IT MADE SENSE TO THE PUBLIC HEALTH COMMUNITY TO WAIT ON
5 THE FTC MACHINE YIELD TESTING METHOD CHANGES UNTIL FDA HAD

6 JURISDICTION TO MAKE IT ALL ONE POLICY THAT WAS MORE
7 COMPREHENSIVE. SO WE SAID, HOLD OFF. HAD THE PUBLIC HEALTH
8 COMMUNITY NOT ARGUED AGAINST CHANGING IT, TO WAIT FOR FDA, IT
9 WOULD HAVE BEEN CHANGED.

10 Q. WELL, THAT'S SPECULATION ON YOUR PART, ISN'T
11 IT?

12 A. IT'S SPECULATION.

13 Q. THE FACT IS, AS WE SIT HERE TODAY, THE FTC USES
14 THE SAME MACHINE?

15 A. THAT'S CORRECT.

16 Q. AND AS A MATTER OF FACT, WHEN THE FTC ANNOUNCED
17 IN THE 1960'S THAT IT WAS INSTITUTING THIS PROCEDURE, DIDN'T
18 IT SAY PUBLICLY, NO TWO HUMAN SMOKERS SMOKE THE SAME WAY, NO
19 INDIVIDUAL SMOKER ALWAYS SMOKES IN THE SAME FASHION, THE
20 SPEED AT WHICH ONE SMOKES VARIES BOTH AMONG SMOKERS AND
21 USUALLY ALSO VARIES WITH THE SAME INDIVIDUAL UNDER DIFFERENT
22 CIRCUMSTANCES EVEN WITHIN THE SAME DAY, SOME TAKE LONG PUFFS
23 OR DRAWS, SOME TAKE SHORT PUFFS, THAT VARIATION AFFECTS THE
24 TAR AND NICOTINE QUANTITY AND THE SMOKE GENERATED?

25 ISN'T THAT WHAT THE FTC ANNOUNCED?

26 A. YES.

27 Q. AND THE CIGARETTE MANUFACTURERS TOLD THE FTC
28 THAT ITS MACHINE WOULDN'T MEASURE THE WAY A SMOKER SMOKES THE
2040

1 CIGARETTE?

2 A. YES.

3 Q. AND THE TAR AND NICOTINE FIGURES THAT ARE
4 PRINTED IN CIGARETTE ADVERTISEMENTS ARE FIGURES THAT THE
5 COMPANIES ARE REQUIRED BY LAW TO PUT THERE; ISN'T THAT TRUE?

6 A. YES.

7 Q. THOSE ARE THE FTC NUMBERS?

8 A. YES.

9 Q. THEY DON'T HAVE A CHOICE. THEY HAVE TO PUT
10 THEM IN THE ADS?

11 A. THAT'S CORRECT.

12 Q. AND THE LIMITATIONS OF THE FTC METHOD HAVEN'T
13 BEEN A SECRET FOR OVER 30 YEARS, IF EVER?

14 A. WELL, NOT A SECRET TO THE FTC. I THINK MOST
15 SMOKERS HAVE NOT BEEN MADE AWARE OF THAT. MOST SMOKERS THINK
16 THAT LOW-YIELD CIGARETTES ARE LESS HAZARDOUS. MOST SMOKERS
17 DON'T REALIZE THAT YOU CAN SMOKE THE LOWEST-YIELD CIGARETTE
18 TO THE HIGHEST-YIELD CIGARETTE WITH A 10 PERCENT DIFFERENCE
19 IN EXPOSURE, MAYBE. SO VERY LITTLE EXPOSURE, WHICH IS WHAT
20 YOU SEE IF YOU MEASURE SMOKERS.

21 SMOKERS HAVE NEVER BEEN TOLD WHAT TO DO TO
22 AVOID COMPENSATION. SO, WHEREAS, SCIENTISTS KNOW ABOUT THAT
23 AND THE GOVERNMENT KNOWS ABOUT IT, SMOKERS DO NOT KNOW ABOUT
24 COMPENSATION, IN GENERAL. AND I THINK THEY SHOULD HAVE.
25 BECAUSE THEY'RE THE ONES WHOSE BEHAVIOR NEEDS TO BE ADJUSTED
26 IF THEY REALLY WANT CIGARETTES TO BE LESS HAZARDOUS.

27 Q. I WANT TO TALK A BIT ABOUT A CONCEPT THAT YOU
28 REFERRED TO, DENIAL.

2041

1 YOU SAID DENIAL IS SOMETHING THAT PEOPLE WHO
2 SMOKE MAY HAVE. PEOPLE WHO ARE ADDICTED TO NICOTINE MAY BE
3 IN DENIAL?

4 A. YES.

5 Q. PEOPLE WHO, AS YOU SAID, USE DRUGS OF ABUSE MAY
6 BE IN DENIAL?

7 A. YES.

8 Q. DENIAL ISN'T SOMETHING THAT'S LIMITED TO PEOPLE
9 WHO USE DRUGS, IS IT?

10 A. NO.

11 Q. PEOPLE DENY MANY THINGS THAT MIGHT SUGGEST TO
12 THEM THEY SHOULDN'T DO SOMETHING THAT THEY WANT TO DO; ISN'T
13 THAT TRUE?
14 A. THAT'S CORRECT.
15 Q. IT'S PRETTY MUCH HUMAN NATURE TO GIVE SHORT
16 SHIFT TO COUNSEL YOU MIGHT GET THAT TELLS YOU NOT TO DO
17 SOMETHING YOU WANT TO DO; ISN'T THAT RIGHT?
18 A. YES. I JUST RAISED IT BECAUSE IT BECOMES A
19 CARDINAL FEATURE OF DRUG ADDICTION. VIRTUALLY ALL DRUG
20 ADDICTS DO THAT AS PART OF THEIR DRUG USE BEHAVIOR.
21 Q. PEOPLE WHO CHOOSE NOT TO WEAR SEAT BELTS WHEN
22 THEY GO DRIVING ARE IN DENIAL ABOUT THE RISKS?
23 A. THEY MAY BE.
24 Q. PEOPLE WHO RIDE MOTORCYCLES KNOWING THE RISKS
25 AND DANGERS IN MOTORCYCLES CAN BE IN DENIAL ABOUT THAT, CAN'T
26 THEY?
27 A. THEY CAN BE.
28 Q. PEOPLE WHO EAT HAMBURGERS AND FRENCH FRIES FOR
2042
1 LUNCH EVERY DAY CAN BEEN IN DENIAL ABOUT THE LONG-TERM
2 EFFECTS OF THAT; ISN'T THAT RIGHT?
3 A. THEY CAN BE.
4 Q. SO THERE'S NOTHING UNIQUE TO SMOKERS OR TO
5 NICOTINE ABOUT THE WORD DENIAL?
6 A. THAT'S CORRECT.
7 Q. AND THERE'S NOTHING TO SUGGEST THAT THE USE OF
8 NICOTINE CREATES THIS DENIAL, IS THERE?
9 A. NO.
10 Q. AS A MATTER OF FACT, PEOPLE WHO ARE IN DENIAL
11 MAY BE PEOPLE WHO WOULD BE IN DENIAL ABOUT ANY RISK-TAKING
12 BEHAVIOR THEY CHOOSE?
13 A. THAT'S POSSIBLE.
14 Q. ONE LAST POINT, AND THEN I THINK WE'RE CLOSING
15 IN ON 4 O'CLOCK.
16 YOU SAID ANY ADDICT WOULD CHOOSE AN OPINION
17 THAT WOULD ALLOW HIM TO KEEP USING -- TO KEEP USING THEIR
18 DRUG IN RESPONSE TO A QUESTION BY MR. PIUZE.
19 DO YOU REMEMBER THAT?
20 A. YES.
21 Q. AND THAT COMES AWFULLY CLOSE -- MAYBE YOU CAN
22 CLARIFY THIS FOR ME -- IT COMES AWFULLY CLOSE TO SAYING,
23 ADDICTS WOULD ALWAYS CHOOSE TO STAY WITH THE DRUG IF THEY
24 HAVE SOME REASON TO DO THAT?
25 A. WELL, NO. THERE ARE LOTS OF DIFFERENT FACTORS
26 PLAYING. THERE ARE OTHER SORTS OF MESSAGES. SOMETIMES, A
27 HEALTH MESSAGE CAN BE SO STRONG THAT IT CAN OVERWHELM DENIAL.
28 OR A SPOUSE OR A CHILD CAN TALK TO THEM ABOUT IT. OR THEY
2043
1 CAN HAVE HEALTH PROBLEMS. OR THEY CAN BE CONCERNED ABOUT
2 PASSIVE SMOKE EXPOSURE TO THEIR CHILDREN. THERE CAN BE LOTS
3 OF MOTIVATIONS THAT CAN DRIVE A PERSON TO THE POINT WHERE
4 THEY ULTIMATELY QUIT.
5 BUT WHAT I'M TRYING TO ADDRESS IS WHY SMOKERS
6 WHO KNOW THAT THEY MAY HAVE A SUBSTANTIAL CHANCE OF KILLING
7 THEMSELVES OR DOING SOMETHING TERRIBLE TO THEMSELVES KEEP ON
8 USING A DRUG. AND A PART OF THAT IS REDUCING OR DENYING THE
9 EXTENT OF RISK, BUT IT'S NOT ABSOLUTE. OTHER FACTORS DO PLAY
10 A ROLE, AND OTHER FACTORS DO CHANGE BEHAVIOR.
11 Q. SO STRONG ENOUGH HEALTH WARNINGS CAN OVERCOME
12 DENIAL, RIGHT?
13 A. IN SOME SITUATIONS, YES.
14 Q. MOTIVATION, STRONG MOTIVATION, CAN OVERCOME
15 DENIAL?

16 A. YES.
17 Q. PEOPLE CAN QUIT?
18 A. YES.
19 Q. 50 MILLION PEOPLE HAVE DONE IT, AND IF THEY
20 WERE SUBJECT TO DENIAL, THEY OVERCAME THAT DENIAL; ISN'T THAT
21 RIGHT?
22 A. YES.
23 MR. CARLTON: THIS IS A GOOD TIME, YOUR HONOR.
24 THE COURT: THANK YOU VERY MUCH, COUNSEL.
25 ALL RIGHT. LADIES AND GENTLEMEN, THAT
26 CONCLUDES OUR WEEK'S WORK. WE WILL NOW TAKE A WEEKEND OFF
27 AND RELAX.
28 REMEMBER THAT OVER THE WEEKEND, YOU CANNOT
2044
1 DISCUSS THIS CASE WITH ANYONE. AND LET ME JUST REMIND YOU,
2 AGAIN. I'VE SAID THIS BEFORE, BUT I'LL SAY IT TO YOU AGAIN.
3 THERE'S WAYS THAT THAT CAN HAPPEN TO YOU JUST
4 INNOCENTLY, AND ALL OF A SUDDEN, YOU FIND YOURSELF IN A
5 CONVERSATION, AND AS SOON AS YOU FIND YOURSELF IN A
6 CONVERSATION, YOU EXTRACT YOURSELF FROM IT, BUT FROM THEN ON,
7 YOU WORRY ABOUT THE FACT THAT IT HAPPENED. YOU ABSOLUTELY
8 DON'T WANT TO LET THAT HAPPEN.
9 SO REALLY, THERE IS ONLY ONE WAY TO COMPLETELY
10 PROTECT YOURSELF FROM IT. AND THAT IS, TO JUST -- BASICALLY,
11 YOU CAN TELL PEOPLE YOU'RE ON JURY DUTY, BUT WHEN IT COMES TO
12 THE NATURE OF THE TRIAL OR WHAT TRIAL YOU'RE INVOLVED IN, YOU
13 JUST DON'T TELL THEM. SAY, I'M JUST NOT AT LIBERTY TO TELL
14 YOU EVEN THAT RIGHT NOW. LATER ON, WHEN IT'S ALL OVER, I'LL
15 BE ABLE TO TALK ALL I WANT TO, BUT RIGHT NOW, I JUST CANNOT
16 EVEN TELL YOU WHAT I'M DOING, AND THEY'LL RESPECT THAT, IF
17 YOU SAY THAT.
18 IF YOU SAY ANYTHING MORE, THOUGH, YOU'RE TAKING
19 A REAL RISK THAT THEY'RE GOING TO START TALKING TO YOU, AND
20 THEN YOU WON'T LIKE THAT ANYMORE, AND YOU'LL KNOW THE REASONS
21 WHY YOU SHOULDN'T BE DOING IT.
22 ALL RIGHT. THANK YOU VERY MUCH, LADIES AND
23 GENTLEMEN. WE'LL SEE YOU AT 8:45 ON MONDAY MORNING.
24 THANK YOU VERY MUCH.
25 MR. LEITER: EXCUSE ME. 1:30.
26 THE COURT: AT 1:30 ON MONDAY AFTERNOON. I HAVE OTHER
27 THINGS TO DO MONDAY MORNING.
28 /
2045
1 (DISCUSSION HELD OFF THE RECORD.)
2
3 (AT 4:00 P.M., AN ADJOURNMENT WAS TAKEN
4 UNTIL MONDAY, APRIL 9, 2001 AT 1:30.)
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